

**CHAPTER XXXV  
IMPACT FEES**

**35.01 PURPOSE**

The purpose of this Chapter is to impose Impact Fees in accordance with Section 66.0617, Wisconsin Statutes, as a condition of an approval granted for the development of land, to be expended as capital costs by the City in the provision of public facilities required to meet the demands for public services by the new development. The requirements of this Chapter are in addition to the requirements of **Chapter 17**, entitled "Regulating the Division and Platting of Land", and other applicable ordinances.

**35.02 DEFINITIONS**

In this Chapter:

**A. "Capital Costs"** means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than ten (10%) percent of capital costs may consist of legal, engineering and design costs unless the City demonstrates that its legal, engineering and design costs which relate directly to the public improvement for which the Impact Fees were imposed exceed ten (10%) percent of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities, vehicles or the costs of equipment to construct, expand or improve public facilities.

**B. "City"** shall mean the City of Kenosha, Wisconsin.

**C. "Developer"** means a person, party, firm, corporation or other legal entity that constructs or creates a land development.

**D. "Development"** means the real property which is the subject of land development.

**E. "Impact Fees"** means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by the City under this Chapter.

**F. "Land Development"** means the construction or modification of improvements to real property that creates additional residential dwelling units within the City or that results in nonresidential uses that create a need for new, expanded or improved public facilities within the City.

**G. "Public Facilities"** means highways, as

defined in Section 340.01(22), Wisconsin Statutes, and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing and distributing water, parks, playgrounds, land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district. With regard to Impact Fees that were first imposed before June 14, 2006, "**Public Facilities**" includes other recreational facilities that were substantially completed by June 14, 2006.

**H. "Service Area"** means a geographic area delineated by the City within which there are public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the City.

**35.03 PUBLIC FACILITIES NEED ASSESSMENT**

This Chapter is based upon a Public Facilities Need Assessment which is on file in the office of the City Clerk and available for inspection and/or copying in accordance with the State Public Records and Property Law, Subchapter II of Chapter 19, Wisconsin Statutes.

**The Public Facilities Need Assessment includes:**

**A.** An inventory of existing Public Facilities, including an identification of any existing deficiencies in the quantity or quality of those Public Facilities for which an Impact Fee is imposed.

**B.** An identification of the new Public Facilities, or improvements or expansions of existing Public Facilities, that will be required because of Land Development for which an Impact Fee is imposed. This identification is based on explicitly identified Service Areas and service standards.

**C.** A detailed estimate of the Capital Costs of providing the new Public Facilities or the improvements or expansions in existing Public Facilities, including an estimate of the effect of recovering these Capital Costs through Impact Fees on the availability of affordable housing within the City.

**35.04 FINDING OF REASONABLENESS AND STATUTORY COMPLIANCE**

Impact Fees imposed by this Chapter are found by the Common Council of City to be reasonable and in compliance with Section 66.0617, Wisconsin

Statutes in that they:

**A.** Bear a rational relationship to the need for new, expanded or improved Public Facilities that are required to serve Land Development.

**B.** Do not exceed the proportionate share of the Capital Costs that are required to serve Land Development, as compared to existing uses of land within City.

**C.** Are based upon actual Capital Costs or reasonable estimates of Capital Costs for new, expanded or improved Public Facilities.

**D.** Do not include amounts necessary to address existing deficiencies in Public Facilities.

**E.** Do not prohibit or deter the construction of affordable housing within the City.

**35.05 IMPACT FEE REDUCTION**

**A.** Impact Fees imposed by this Chapter shall be reduced to the extent necessary:

**1.** To compensate for other Capital Costs imposed by City with respect to Land Development to provide or pay for Public Facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under Chapter 236, Wisconsin Statutes, or any other items of value.

**2.** To compensate for moneys received from the Federal or State government specifically to provide or pay for the Public Facilities for which the Impact Fees are imposed.

**B.** The Board of Park Commissioners may, in its discretion, provide for an exemption from, or a reduction in the amount of Park/Open Space Impact Fees imposed on a Developer that provides low-cost housing in accordance with guidelines established by the Department of Neighborhood Services and Inspections, except that no amount of an Impact Fee for which an exemption or reduction is provided under this Section may be shifted to any other development in the Land Development in which the low-cost housing is located or to any other Land Development in the City.

**35.07 PAYMENT OF IMPACT FEES**

A Developer shall pay an Impact Fee for any Land Development, in full, to the City Clerk/Treasurer, upon the issuance of a Building Permit.

**35.08 IMPACT FEE REVENUES**

Revenues from Impact Fees shall be placed in a segregated, interest bearing account, and shall be accounted for separately from the other funds of City. Impact Fee revenues and interest earned on Impact Fee revenues may be expended only for Capital Costs for which the Impact Fees were imposed.

The revenue and expenditure totals for each Impact Fee must be included in the City's annual budget, and a summary of the revenue and expenditure totals for each Impact Fee must also be made available in the City's annual budget summary as required under Section 65.90(3)(a), Wisconsin Statutes.

**35.09 TIME FOR USE OF IMPACT FEES**

Impact Fees imposed and collected by City under this Chapter shall be used within the time limits defined by Section 66.0617(9), Wisconsin Statutes, by City to pay the Capital Costs of the Public Facilities for which they were imposed, or in the alternative, refunded to the current owner of the real property with respect to which the Impact Fees were imposed, along with any interest that has accumulated. Specifically, the time limits shall be as follows:

**A.** With regard to Park/Open Space Impact Fees collected before January 1, 2003, not later than December 31, 2012.

**B.** With regard to Park/Open Space Impact Fees collected after December 31, 2002, and before April 11, 2006, not later than the first day of the 120<sup>th</sup> month beginning after the date on which the fee was collected.

**C.** With regard to Park/Open Space Impact Fees collected after April 10, 2006, but within seven (7) years of the effective date of the Ordinance enacting the Park/Open Space Impact Fees, ten (10) years after the effective date of the Ordinance enacting Park/Open Space Impact Fees.

**D.** With regard to Park/Open Space Impact Fees collected after April 10, 2006, but more than seven (7) years after the effective date of the Ordinance enacting Park/Open Space Impact Fees, fifteen (15) years after the date on which the fee was collected. Said fifteen (15) year period of time is found to be reasonable by the Common Council of the City in view of the appropriate planning and financing periods for the particular types of facilities for which said Impact Fees are imposed.

**E.** With regard to Sewer Impact Fees collected within seven (7) years after the effective date of the Ordinance enacting Sewer Impact Fees, ten (10)

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years after the effective date of the Ordinance enacting Sewer Impact Fees.

F. With regard to Sewer Impact Fees collected more than seven (7) years after the effective date of the Ordinance enacting Sewer Impact Fees, twenty (20) years after the date on which the fee was collected. Said twenty (20) year period of time is found to be reasonable by the Common Council of the City in view of the appropriate planning and financing periods for the particular types of facilities for which said Impact Fees are imposed.

**35.10 IMPACT FEES**

In addition to a Storm and Surface Water Impact Fee, Impact Fees are imposed upon Developers of land, as follows:

**A Park/Open Space Impact Fee** to acquire real property for parks or open space and for the development and improvement of such real property. The real property acquired, developed or improved may be in the nature of a neighborhood park/open space directly serving the development, or in the nature of a park/open space which benefit Development and entire City, such as, but not limited to, golf courses, swimming pools, fishing facilities, athletic fields and environmental corridors. The costs of equipment not physically attached to real property, and the costs of operation are ineligible costs.

The fee shall be as follows:

For one (1) and two (2) family development, five (5%) percent of the value of the land, subject to development, excluding land dedicated as a public street, or for any other public purpose, but not less than One Thousand Four Hundred Fifteen (\$1,415.00) Dollars per lot. Land value shall, at the option of the Department of City Development, be the assessed value or the value determined by an appraiser retained by the Department.

For multifamily development (residential development of more than two (2) units per building), five (5%) percent of the value of the land, subject to development, excluding land dedicated as a public street, or for any other public purpose, but not less than One Thousand Two Hundred Five (\$1,205.00) Dollars per dwelling unit. Land value shall, at the option of the Department of City Development, be the assessed value or the value determined by an appraiser retained by the Department.

**B. Sewer Impact Fee.** To promote the public health, safety and general welfare of the community, and to facilitate the adequate provision of sanitary sewerage facilities, Impact Fees are imposed upon

developers to pay for the capital costs that are necessary to accommodate land development.

The fee shall be as follows:

<b>Water Meter Size</b>	<b>Equivalency Factor</b>	<b>Recommended Fee</b>
5/8"	1.0	\$3,281
3/4"	1.0	\$3,281
1"	2.5	\$8,204
1-1/2"	5.0	\$16,407
2"	8.0	\$26,252
3"	15.0	\$49,222
4"	25.0	\$82,037
6"	50.0	\$164,074
8"	80.0	\$262,518
10"	120.0	\$393,777

**C.** The Impact Fees imposed under this Section shall be increased annually at a rate equal to the percentage change in the Engineering News Record Construction Cost Index for the Chicago Region for the previous twelve (12) months, with the adjustment effective January 1 of each year. The City Clerk/Treasurer, or designee, shall calculate the adjusted fees and maintain a copy of the calculation and the adjusted Impact Fees in the office of the City Clerk/Treasurer.

**35.11 APPEAL**

**A.** A Developer upon whom a Park/Open Space Impact Fee is imposed shall have the right to contest the amount, collection or use of said Impact Fee by filing a written Notice of Appeal with the City Clerk/Treasurer within thirty (30) days following the imposition of the Park/Open Space Impact Fee. Upon the filing of a timely appeal, the appeal shall be reviewed by the City Finance Committee, who shall provide the Developer with notice and an opportunity to be heard and then make a recommendation to the Common Council of City. The Common Council of City shall make a determination on timely appeals within ninety (90) days of the date of the filing of the Notice of Appeal. The Common Council of City may affirm, negate, or modify the Park/Open Space Impact Fee.

**B.** A Developer upon whom a Sewer Impact Fee

is imposed shall have the right to contest the amount, collection or use of said Impact Fee by filing a written Notice of Appeal with the General Manager of the Kenosha Water Utility within thirty (30) days of the imposition of the Sewer Impact Fee. Upon the filing of a timely appeal, the Board of Water Commissioners shall provide the Developer with notice of an opportunity to be heard. The Board of Water Commissioners shall make a determination on timely appeals within ninety (90) days of the date of the filing of the Notice of Appeal. The Board of Water Commissioners may affirm, negate, or modify the Sewer Impact Fee.