

**AN ORDINANCE CREATING IMPACT FEES TO BE CHARGED ON NEW DEVELOPMENTS  
TO FUND CITY TRANSPORTATION, PARK, AND RECREATION INFRASTRUCTURE**

**ORDINANCE 889-2022**

**WHEREAS**, the City Council of the City of Helena, Alabama wants to provide best in class infrastructure to the residents and visitors of the City of Helena,

**WHEREAS**, the Code of the City of Helena, Alabama be amended to add the sections within this ordinance that will pertain to impact fees on new development,

**BE IT ORDAINED**, by the City Council of the City of Helena, Alabama as follows:

**Section 1. Generally**

- 1.1 That the 2020 US Census reported the City of Helena population at 20,914 increasing from 16,793 in the 2010 US Census report making the City of Helena one of the fastest growing cities within Shelby County and the State of Alabama. A continued rapid growth is expected in the coming years.
- 1.2 The rapid growth imposes increased demands upon public facilities and requires the new capacity be added to public facilities to maintain current levels of service.
- 1.3 That changes, additions, and enhancements to transportation infrastructure will be needed to accommodate the increased traffic generated by new developments to maintain at least the same level of services as today.
- 1.4 That changes, additions, and enhancements to the City's Parks and Recreation facilities will be needed to add capacity and facilities to serve new developments to maintain at least the same level of services and facilities today.
- 1.5 That traditional funding sources have decreased at both the state and federal level and traditional municipal taxes and funding sources are not adequate to make all the transportation, park and recreation changes needed to maintain the level of service while also attending to other municipal needs.
- 1.6 That the City's traditional tax revenues from new developments will not generate enough revenue in time to cover the City of Helena's costs to add the capacity needed to serve new developments with adequate transportation, parks, and recreation facilities.
- 1.7 That the impact fees charges under this ordinance will benefit the new developments by funding a portion of the park, recreation and/or transportation improvements that will be needed to add the capacity needed to serve the new developments with the same level of service that the City currently provides.
- 1.8 That the impact fees collected by this ordinance will be proportional to the impacts created by new developments which will be charged the fees, and the impact fee will be appropriate for the benefits the new development will receive.

- 1.9 That the impact fees created and imposed by this ordinance are reasonable, be appropriate, and necessary.

## **Section 2. Authorization**

This Ordinance is enacted pursuant to the City's general police power, its general power to raise revenues, its authority to regulate land use and development, and under the authority granted to it under Code of Alabama, Sections 45-2-243.80, et seq.

## **Section 3. Definitions**

When used in this Ordinance, the following words, terms, phrases, and their derivations, shall have the meanings ascribed to them except where the context clearly indicates a different meaning.

**Assisted Living** – Establishments primarily providing either routine general protective oversight, assistance with activities necessary for independent living to mentally or physically limited persons, or establishments providing care for persons who are unable to care for themselves. By way of example, Assisted Living includes assisted living facilities, nursing homes, rest homes, chronic care homes, and convalescent homes.

**Building Permit** – A document issued by the City's Building Department authorizing construction or development activities within the corporate limits of the City.

**Certificate of Occupancy** - A certificate issued by the City's Building Department allowing a structure to be occupied and used for a particular type of use.

**City** – The City of Helena, Alabama.

**Commercial** – Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, Commercial includes shopping centers, supermarkets, pharmacies, restaurants, bars, and gas stations. Commercial also includes any non-residential development that does not fit in any other development type.

**Developer** – An applicant for a building permit with the city.

**Hotel** – A place of lodging that provides sleeping accommodations and may include supporting facilities such as restaurants, cocktail lounges, meeting rooms, banquet rooms, convention facilities, limited recreational facilities, and/or other retail and service shops. The term hotel also includes motels, extended stay hotels, and short-term rentals.

**Industrial** – Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, Industrial includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

**Institutional** – Public or quasi-public buildings providing educational, social assistance, or religious services. By way of example, Institutional includes schools, universities, churches, daycare facilities, hospitals, and government buildings, however the City of Helena is exempt.

**Impact Fee** – The fee imposed pursuant to this ordinance against certain new developments as a condition of, or in connection with, approval of a building permit application for the purpose of funding or recouping costs of governmental infrastructure necessitated by and proportionally attributable directly to this type of new development.

**Mixed Use** - An integrated development that incorporates two or more types of land uses. By way of example, housing, offices, retail, entertainment, institutions, services, and restaurants.

**Multi-Family** – All residential developments that are not single family or hotel. By way of example, duplexes, triplexes, apartments, condominiums, and any other residential developments intended to be occupied by more than one single family.

**New Development** – The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land, any of which increases the demands on governmental infrastructure, for which a building permit or certificate of occupancy is required.

**Office & Other Services** – Establishments providing management, administration, professional, or business services. By way of example, Office & Other Services includes banks, business offices, medical offices, and veterinarian offices.

**Single Family** – A dwelling unit designed for occupancy by one family. This includes manufacturing houses, modular dwellings, site-built structures, and any other form of structure, or addition to a structure, intended for use as a residence. Manufactured houses used for business office purposes instead of for residences are treated as Office & Other Services. Manufactured houses that are for sale on a dealer's lot, or in storage, are excluded until they are sold or moved into residential use.

#### **Section 4. Impact Fees Imposed; Impact Fee Schedule**

The City hereby imposes an impact fee to be charged on all new developments constructed within the City's corporate limits in accordance with the following Impact Fee Schedule:

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Impact Fee Schedule			
Development Type	Parks & Recreation	Transportation	Total Impact Fee
Assisted Living	\$0	\$98	\$98 per Bed
Commercial	\$0	\$0.97	\$0.97 per SF
Hotel	\$0	\$324	\$324 per Bedroom
Industrial	\$0	\$0.15	\$0.15 per SF
Institutional	\$0	\$0.27	\$0.27 per SF
Mixed Use – Commercial	\$0	\$0.97	\$0.97 per SF
Mixed Use - Residential	\$2,007	\$400	\$2,407 per Unit
Multi-Family Residential	\$2,007	\$400	\$2,407 per Unit
Office & Other Services	\$0	\$0.36	\$0.36 per SF
Single Family Residential	\$2844	\$697	\$3,541 each

## Section 5. Impact Fee Cap; Procedure for determining Estimated Fair Market Value

- 5.1 The maximum impact fee shall be the lesser of
  - 5.1.1 The amount called for in the Impact Fee Schedule, or
  - 5.1.2 One percent (1%) of the estimated fair and reasonable market value of the new development after completion of the work called for in the building permit. In no event shall the City collect an impact fee in excess of one percent (1%) of the estimated fair and reasonable market value of the new development.
- 5.2 To determine the estimated fair and reasonable market value of a new development, the sum of the amount set forth in the issuance of the building permit plus the value of the land, or an estimated fair and reasonable market value based on information submitted by the developer, shall be considered. For the land valuation component, when available, the County's Revenue Department's fair market value for ad valorem property tax purposes shall be used unless the developer submits an alternative appraisal.
- 5.3 If the City's Building Department does not agree with the developer on the estimated fair and reasonable market value, then the City may obtain an appraisal by a licensed appraiser at the City's cost.
  - 5.3.1 If the value of the development as submitted by the developer and the value set forth in the appraisal obtained by the City are within ten percent (10%) of each other, then the two values shall be averaged to determine the estimated fair and reasonable market value of the development.
  - 5.3.2 If the two values are not within ten percent (10%) of each other, then the developer and the City shall together select a licensed appraiser to submit an appraisal that would be binding on both parties, and both parties would equally share the cost of this appraisal.



## **Section 6. Collection of Impact Fees; Exceptions**

- 6.1 Impact fees may be imposed only on new developments and only against a particular new development in reasonable proportion to the demand for additional capacity in transportation, park and recreation public facilities that can reasonably be attributed to the new development.
- 6.2 Impact fees shall be calculated and collected by the Building Department prior to issuance of a building permit for new developments.
- 6.3 All impact fees shall be paid in cash or readily available funds and not by in-kind service work.
- 6.4 An impact fee is both a personal liability of the owners of property that is the subject of the new development and a lien upon the property.
- 6.5 An impact fee may be levied only once on a service unit, but if that same service unit is the subject of a later new development, an incremental future impact fee may be charged in the future if required by City ordinance.
- 6.6 Impact fees shall be paid in full before any building permit is issued for a new development.
- 6.7 Impact fees are only refundable if: the building permit has been terminated or expired; and the developer files a written request with the Building Department for an impact fee refund within 60 days of the termination or expiration of the building permit. A processing fee of \$500.00 shall be withheld from any refund allowed pursuant to this section.

## **Section 7. Impact Fee Accounts**

The impact fees collected pursuant to this Ordinance shall be deposited into special accounts of the City, with the transportation funds separated from the parks and recreation funds. The City shall separately account for fees collected in each account. The funds of the account shall not be commingled with each other or with any other funds or accounts of the City.

## **Section 8. Use of Impact Fees; Refunds of Unused Impact Fees**

- 8.1 Impact fees may be expended only for the type of governmental infrastructure for which they were imposed, calculated, and collected (e.g. transportation impact fees may only be expended for transportation projects), or to recover the City's costs in preparing any impact fee studies or the City's costs to administering and enforcing this ordinance, including any appraisals or studies required.
- 8.2 Impact fees collected shall be expended within the time limits established by State law.
- 8.3 Impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the City to finance the improvements for which the impact fees were charged.
- 8.4 Any impact fees collected that the City later determines are not needed for governmental infrastructure projects of the type for which they were collected, and any impact fees collected but not expended or contracted

to be expended within any time limits required by State law, shall be refunded by the City to the developer who paid the fee, or their designee. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent in writing to the developer within a reasonable time after the refund becomes due. Any refund shall be made on pro rata basis, without interest, upon satisfactory documentation from the developer of the full legal names and tax identification numbers of the payee.

## **Section 9. Impact Fee Review Committee; Composition; Duties**

- 9.1 There is hereby created an Impact Fee Review Committee which shall be chaired by the Mayor and comprised of the Mayor, the City Clerk, the City Engineer, the Building Official, and the department heads from finance, parks, recreation, and public works.
- 9.2 The Impact Fee Review Committee shall report at least once each year to the City Council with:
  - 9.2.1 Recommendations for amendments to this article.
  - 9.2.2 Identifying capital improvements to be funded in whole or in part by impact fees.
  - 9.2.3 Proposals for changes to impact fee rates and schedules.
  - 9.2.4 Current impact fee balances in each different account.
  - 9.2.5 Proposed or possible uses of impact fees.
- 9.3 The Impact Fee Review Committee shall also hear appeals of impact fee calculations and consider and rule on impact fee credit requests.

## **Section 10. Appeals of Impact Fees**

Any owner of property against which an impact fee has been assessed, or any developer seeking a building permit for a new development on property, may appeal the imposition of the impact fee. The owner or developer's appeal will first go to the Impact Fee Review Committee which shall conduct a hearing and issue a ruling. If the owner or developer disagrees with the decision of the Impact Fee Review Committee, then the owner or developer may appeal to the City Council. The City Council shall conduct its own hearing and make final decision on any appeal. No building permit shall be issued until the appeal is resolved and any impact fee owed is paid unless the developer elects to pay the City's calculated fee and submits a written statement that payment is made "under protest" or that includes other language that would notify a reasonable person that the owner or developer intends to preserve the right of review.

## **Section 11. Impact Fee Credits**

- 11.1 A property owner or developer who dedicates land or otherwise provides some material assistance to the City to add capacity to the parks, recreation, or transportation infrastructure needs which would otherwise be funded by the impact fees under this ordinance may apply for and be eligible for a credit against the impact fees that would be otherwise be charged to the developer. The work or assistance must be something more than what is

normally required of new developments, such as adjacent new road right of way to serve a new subdivision or common area amenities in a new subdivision, which are normal conditions of approval or voluntary measures by the developer and not eligible for impact fee credits.

11.2 The Impact Fee Review Committee shall determine:

11.2.1 The value of the developer contribution.

11.2.2 Whether the contribution meets capital improvement needs for which particular impact fee has been imposed.

11.2.3 Whether the contribution will substitute or otherwise reduce the need for capital improvements anticipated to be provided with the impact fee funds. In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee. Any application for credit must be submitted on forms provided by the city before development project approval. The application shall contain a declaration under oath of those facts which qualify the property owner for the credit, accompanied by the relevant documentary evidence. If a credit is issued, then the impact fee due shall be reduced; however, if the developer's contribution is not finished, the City may withhold certificates of occupancy until the contribution is completed or the developer pays the balance of the impact fee due without credit.

## **Section 12. Severability**

If any portion or provision of this Ordinance, or its application to any person or circumstance, shall be declared unconstitutional or otherwise declared void, voidable, or invalid for any reason or should any portion be pre-empted by State or Federal law or regulation, such portion or provision shall be deemed severed, and any such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this Ordinance or its application to other persons or circumstances.

## **Section 13. Effective Date**

This Ordinance shall become effective immediately upon its adoption and publication as required by law.

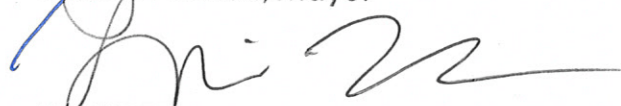
**ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HELENA, ALABAMA ON THE 25 DAY OF APRIL 2022.**



Attest:

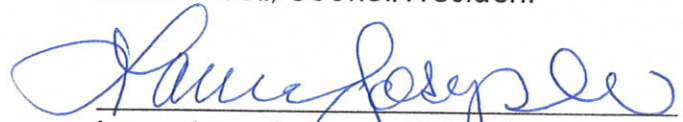
  
Amanda Traywick, City Clerk

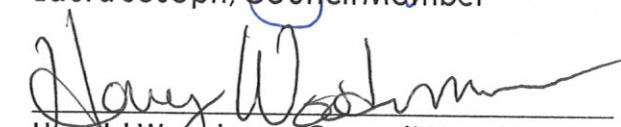
  
J. Brian Puckett, Mayor

  
Leigh Hulsey, Council Member

  
Chris VanCleave, Council Member

  
Alice Lobell, Council President

  
Laura Joseph, Council Member

  
Harold Woodman, Council Member