



Metropolitan Nashville and Davidson County, TN

Legislation Text

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An ordinance amending Title 5 of the Metropolitan Code to establish a development impact fee.

WHEREAS, the recent population growth in Nashville and Davidson County has negatively impacted the Metropolitan Government's ability to provide adequate schools facilities and other public facilities and infrastructure; and

WHEREAS, the Metropolitan Council has determined that the need for public facilities within the area of the metropolitan government is reasonably related to new development in the county.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Title 5 of the Metropolitan Code is hereby amended by adding the following new Chapter 5.34 - Development Impact Fee:

Chapter 5.34 Development Impact Fee

5.34.010 Findings and purpose.

The recent population growth in Nashville and Davidson County has negatively impacted the Metropolitan Government's ability to provide adequate schools facilities and other public facilities and infrastructure. This has led to inequities in certain areas of Nashville and Davidson County, and has impacted the quality of life of residents. The Metropolitan Council has determined that the need for public facilities within the area of the Metropolitan Government is reasonably related to new development in the county. The purpose of this chapter is to provide a funding mechanism to enable the Metropolitan Government to help address the need for public facilities and infrastructure resulting from development.

5.34.0240 Definitions.

As used in this chapter, the following terms have the meanings ascribed herein:

"Building" means any structure built for the support shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. This will not pertain to buildings used for agricultural purposes;

"Building permit" means a permit for development issued by the Metropolitan Government;

"Certificate of occupancy" means a license for occupancy of a building or structure issued by the Metropolitan Government;

"Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use;

"Dwelling unit" means a room, or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room or dwelling units which may be in the same structure; and containing

independent cooking and sleeping facilities

"Floor area" means:

For non-residential development, the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas; and

For residential development, the total of the gross horizontal area of all floors, including basements, cellars, or attics that are heated or air-conditioned living space, or are designed to be finished into heated or air-conditioned living space at a future date;

"Impact fee" means the privilege tax levied pursuant to this chapter;

"Metropolitan council" means the Metropolitan County Council of the Metropolitan Government of Nashville and Davidson County;

"Non-residential" means the development of any property for any use other than residential use, except as may be exempted by this section;

"Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number;

"Place of worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status;

"Public buildings" means a building owned by the state of Tennessee or any agency thereof, a political subdivision of this state, including, but not limited to, the Metropolitan Government and its satellite cities, or the federal government or any agency thereof;

"Public facility" means a physical improvement undertaken by the Metropolitan Government, including and limited to the following: roads and bridges, jails and law enforcement facilities, schools, government buildings, fire stations, sanitary landfills, water, and wastewater and drainage projects; and

"Residential" means the development of any property for a dwelling unit or units.

5.34.020 Impact fee established.

A. Engaging in the act of development within the area of the Metropolitan Government, except as provided in subsection B., is declared to be a privilege upon which the Metropolitan Government may levy a tax in an amount not to exceed the rate set forth in subsection C.

B. This section does not apply to the development of:

1. Public buildings;
2. Places of worship;
3. Barns or outbuildings used for agricultural purposes;
4. Replacement structures for previously existing structures destroyed by fire or other disaster;
5. Additions to a single-family dwelling;
6. A structure owned by a non-profit corporation which is a qualified 501(c)3 corporation under the Internal

Revenue Code;

7. Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure provided that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years; or

8. Buildings moved from one site within the area of the metropolitan government to another site within the area of the Metropolitan Government.

C. 1. For the exercise of the privilege described herein, the following tax is imposed on new development within the area of the Metropolitan Government:

(a) One dollar (\$1.00) per gross square foot of residential development; and

(b) Two dollars (\$2.00) per gross square foot of non-residential development.

5.34.030 Collection of impact fee.

The impact fee established by this chapter shall be collected at the time of application for a building permit for development as herein defined. No building permit for development shall be issued unless the impact fee has been paid in full to the department of codes administration.

5.34.040 Use of impact fee proceeds.

All impact fee revenue collected shall be used to provide public facilities, the need for which is reasonably related to new development.

5.34.050 Severability.

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

5.34.060 Effective date.

The provisions of this chapter shall only become effective upon the enactment of enabling legislation by the Tennessee General Assembly authorizing the Metropolitan Government to levy the privilege tax set forth in this chapter, and shall remain in effect for so long the state enabling legislation remains in effect.

Section 2. The Metropolitan Planning Department, the Department of Codes Administration, and the Department of Finance are hereby authorized and directed to develop administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce this chapter, subject to approval of the Metropolitan Council by resolution.

Section 3. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance would implement a development impact fee in Nashville and Davidson County which would only become effective upon the enactment of legislation by the Tennessee General Assembly authorizing the Metropolitan Government to levy an impact fee or privilege tax as set forth in the ordinance. Impact fees are monetary amounts paid by developers at the time a development commences that are designed to offset the impact the development will have on government services and infrastructure.

Provided that state enabling legislation authorizes this ordinance, there would be an impact fee at a rate of \$1.00 per gross square foot of residential development and \$2.00 per gross square foot of non-residential

development. Certain development would be excluded from the impact fee, including public buildings, places of worship, barns or outbuildings used for agricultural purposes, replacement of structures destroyed by fire or natural disaster, additions to single-family dwellings, and structures owned by certain nonprofit organizations.

The impact fee would be collected at the time of application for a building permit and no permit could be issued until the impact fee has been paid to the Metropolitan Department of Codes Administration. The impact fees would be used to provide necessary public facilities related to new development. Public facilities includes roads, bridges, jails, law enforcement facilities, schools, government buildings, fire stations, landfills, water and wastewater projects, and drainage projects.

While the ordinance provides that the bill will only become effective upon approval of the state enabling legislation, the Council Office is of the opinion that enacting an impact fee is inconsistent with the 2006 Tennessee County Powers Relief Act (CPRA) (codified as T.C.A. § 67-4-2901, et seq.), and thus cannot be implemented in Davidson County absent a change in state law. Although there was a state public act from 1988 regarding impact fees that other counties used to implement impact fees, that act predated the CPRA. The 1988 public act has essentially been preempted by the CPRA, which provides that “after June 20, 2006, no county shall be authorized to enact an impact fee on development or a local real estate transfer tax by private or public act.” (T.C.A. § 67-4-2913). Since Metro did not have an impact fee enacted prior to 2006, Metro cannot rely on the 1988 public act.

In order to be eligible to enact an impact fee under the CPRA, Metro must meet one of the following:

1. The county experienced a growth rate of 20% or more in total population from the 1990 federal census to the 2000 federal census, or any subsequent federal decennial censuses; or
2. The county experienced a 9% or more increase in population over the period from the year 2000 to 2004, or over a subsequent four-year period, according to United States census bureau population estimates.

To date, Metro has not met the population increase thresholds articulated in the state law. In addition, a court would likely find there is not a sufficient nexus between the development paying the impact fee and the use of the funds.

There is no legislation pending before the Tennessee General Assembly that would authorize the Metropolitan Government to implement an impact fee. Further, the Council Office is not aware of any intent to bring legislation before the Tennessee General Assembly in the 2023 session to implement an impact fee. While this legislation purportedly becomes effective only upon the enactment of enabling legislation by the Tennessee General Assembly, without that enabling legislation this ordinance cannot be effective.