

**ORDINANCE NO. 2025-004  
NEW GARDEN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF NEW GARDEN TOWNSHIP CHESTER COUNTY, PENNSYLVANIA  
PART II, GENERAL LEGISLATION, CHAPTER 184, WHICH SHALL BE KNOWN AS THE  
NEW GARDEN TOWNSHIP TRANSPORTATION IMPACT FEE ORDINANCE**

**Section 1. Title.**

This Ordinance shall be known as the "New Garden Township Transportation Impact Fee Ordinance."

**Section 2. Authority.**

This ordinance is enacted pursuant to the authority of Act 209 of 1990 ,Article V-A of the Pennsylvania municipalities planning code and the Pennsylvania Second Class Township Code 53 P.S. Section 65101 et seq.

**Section 3. Purpose.**

The purpose of this chapter is to establish a transportation impact fee to ensure that the transportation system is available and adequate to support new growth and development so 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 New Garden Township at the time of building permit(s) issuance

**Section 4. General findings and conditions.**

The New Garden Township Board of Supervisors hereby finds and declares that:

- A. The conditions and standards for the determination and imposition of the transportation Impact fee set forth herein are those set forth in Act 209 of 1990, Article V-A, Municipal Capital Improvement, of the Pennsylvania Municipalities Planning Code The Act, 53 P.S. § 10501-A et seq., and any and all amendments thereto (hereinafter the "Act"), and consists of:
1. The recitals set forth above;
  2. The analysis, advice and recommendations of the Transportation Impact Fee Advisory Committee;
  3. The Land Use Assumptions Report as approved by the New Garden Township Board of Supervisors on April 21, 2025;*by Resolution No 2025-009*
  4. The Roadway Sufficiency Analysis as approved by the New Garden Township Board of Supervisors on June 16, 2025 by Resolution No 2025-012;
  5. The Transportation Capital Improvements Plan, as approved by the New Garden Township Board of Supervisors on July 21 2025 by Resolution No 2025-015and

6. Such other conditions and standards as the New Garden Township Board of Supervisors may by resolution identify from time to time as being relevant and material to the imposition of a transportation impact fee and consistent with the provisions of the Act and any amendments thereto.
- B. The collection, disbursement and accounting of transportation impact fees shall be administered by an employee of New Garden Township as designated by the Board of Supervisors
- C. The amount of the per-peak-hour-trip transportation impact fees shall be as set forth in Section 12, "Method of calculation of transportation impact fees" of this Ordinance.
- D. The time, method and procedure for payment of transportation impact fees shall be as set forth in Section 17, "Time, method and procedure for payment" of this Ordinance.
- E. The procedures for credits against transportation impact fees shall be as set forth in Section 18, "Credit" of this Ordinance.
- F. The procedures for refunds of transportation impact fees shall be set forth in Section 19, "Refunds" of this Ordinance.

#### **Section 5. Definitions.**

The terms and definitions set forth in § 502-A of the Act are hereby adopted and incorporated by reference in full in this chapter, as if they were attached hereto.

#### **Section 6. Enactment and imposition of transportation impact fees.**

There are hereby enacted transportation impact fees to be imposed upon new development, as defined in the Act, for the purpose of off-site public transportation capital improvements authorized by the Act and as described by the Transportation Capital Improvements Plan adopted by the Board of Supervisors. Said transportation impact fees shall apply to all new subdivisions and land developments within the transportation service area established pursuant hereto, and the imposition and payment shall be a condition precedent to final approval of a subdivision or land development plan and issuance of a building permit.

#### **Section 7. Uses.**

Transportation impact fees collected pursuant to this chapter shall be expended for costs incurred for improvements attributable to new development and designated in the Transportation Capital Improvements Plan adopted by the Board of Supervisors for improvements within the transportation service area in which the new development will be located. Additionally, such fees may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs and all other costs, including debt service related to road improvements within the designated service area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

## **Section 8. Incorporation and adoption of supporting documentation.**

The following documents, previously approved by the New Garden Township Board of Supervisors, are hereby incorporated by reference in this ordinance, as if attached hereto Resolution No 2024-03 designating the geographical areas of the township as the transportation district constituting the Transportation Service Area. Land Use Assumptions Report as approved by Resolution No. 2025-09.

Roadway Sufficiency Analysis as approved by Resolution No. 2025-12.

Transportation Capital Improvements Plan as approved by Resolution No. 2025-015 .

Recommendations of the Transportation Impact Fee Advisory Committee, including those set forth in the documents identified herein.

Transportation Service Areas Map prepared by Bowman, attached as FIGURE 2LUAR Map in the Roadway Sufficiency Analysis Report and incorporated by reference in full herein, as if attached hereto.

## **Section 9. Special traffic 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 traffic study 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 traffic 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 the transportation impact fee and shall be considered in determination of same. The applicant shall be responsible for all costs associated with the special traffic 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 to the requirements of the New Garden Township 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 said fee.

## **Section 10. Uniform applicability of transportation impact fee.**

This Ordinance shall be uniformly applicable to all subdivision and land developments that occur within the defined transportation service area.

## **Section 11. 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 in the transportation service area hereto unless the applicant therefore has paid the transportation impact fees imposed by and calculated pursuant to this chapter.

## Section 11. Exemptions

The following new development or subdivision shall be exempt from the imposition of the impact fee adopted pursuant to this chapter

- A. All new development or subdivisions which constitute affordable housing to low and moderate income persons as defined in Act 209 (53 P. Section 10501-A eq seq) shall be entitled to a credit of up to one hundred percent (100%) against the impact fee otherwise assessable against said development. B. All new development or subdivision which are determined by New Garden Board of Supervisors to serve an overriding public interest shall be entitled to a credit of up to one hundred percent (100%) against the otherwise applicable impact fee.
- B. De Minimus applications.

## Section 12. Method of calculation of transportation impact fees.

- A. The transportation impact fees for transportation capital improvements shall be based upon the total costs of the road improvements included in the approved Roadway Sufficiency Analysis and Transportation Capital Improvements Plan within the transportation service area, which are attributable to and necessitated by the new subdivision and/or land development within the transportation service area 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 approved Land Use Assumptions Report and b) calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, 11th or subsequent editions, as amended, which is hereby approved by New Garden Township, to equal a per-trip cost for transportation Improvements within the transportation service area.
- B. The specific 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 PM 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, 11th or subsequent editions, as amended.
- C. 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.
- D. The New Garden Township Board of Supervisors may authorize or require the preparation of a special traffic 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.

## Section 13. Establishment of transportation service area.

- A. The transportation service area is established as shown on the **FIGURE 2LUAR Map** " within the Roadway Sufficiency Analysis Report, and incorporated by reference in full herein.

- B. Additional transportation service areas or subareas or combinations of transportation service areas or subareas may be designated by the New Garden Township Board of Supervisors from time to time, consistent with the procedure set forth in this chapter and in consideration of the following factors:
1. The Comprehensive Plan;
  2. Any standards for adequate public facilities incorporated in the Transportation Capital Improvement Plan;
  3. The projected build-out and timing of development areas;
  4. The need for and cost of un-programmed transportation improvements necessary to support projected development; and
  5. Such other factors as the New Garden Township Board of Supervisors may deem relevant.
- C. Fees collected from development and subdivision in the transportation service area shall be used exclusively to fund transportation improvement projects scheduled for that transportation service area or sub area.

#### **Section 14. Calculation of per-peak-hour-trip fee for the transportation service area.**

The amount of per-peak-hour-trip fee for the transportation service area shall be \$\_\_3,682.00, unless revised or amended by resolution of the Board of Supervisors establishing a revised or amended fee in accordance with the provisions hereof and the Act, calculated in accordance with the Act as follows:

- A. Total costs of road improvements in the Transportation Service Area included in the approved Roadway Sufficiency Analysis and Transportation Capital Improvements 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.
- B. Total costs attributable to the Transportation Service Area

#### **Section 15. Nonbinding transportation impact fee estimate.**

Prior to making an application for a building permit, an applicant may request a nonbinding transportation impact fee estimate from New Garden Township which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specifies use of the development.

#### **Section 16. Administration of transportation impact fees.**

- A. Collection. Transportation impact fees due pursuant to this chapter shall be collected by New Garden Township in the manner or manners prescribed herein prior to the issuance of a building permit.

- B. Establishment of the fund. Upon receipt of transportation impact fees, New Garden Township shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of New Garden Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds of such account.
1. Notwithstanding any other provision of this article, and in compliance with Act 209, the Township may expend transportation impact fees paid by an applicant for projects not contained in the Roadway Sufficiency Analysis and Transportation Capital Improvements Plan, or may provide a credit against transportation impact fees for the value of any construction not contained in the Roadway Sufficiency Analysis and Transportation Capital Improvements Plan, which are performed at the applicant's expense if all of the following criteria are met:
- a. 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 Roadway Sufficiency Analysis and Transportation Capital Improvements Plan;
  - b. 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
  - c. The township amends its Roadway Sufficiency Analysis and Transportation Capital Improvements Plan to provide replacement of the collected transportation impact fees transferred to alternative transportation project from sources other than impact fees or development 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.
- C. Establishment and maintenance of accounts. The Township shall establish appropriate trust fund accounts and shall maintain records whereby transportation impact fees collected can be segregated for each transportation service area.
- D. Maintenance of records. The Township shall be responsible for the separate and proper accounting of any transportation impact fees received pursuant to this Article. The Township shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Roadway Sufficiency Analysis and Transportation Capital Improvements Plan for the transportation service area.

#### **Section 17. 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 municipality in cash, bank cashier's check, certified check or electronic fund transfer approved by the Township in accordance with the provisions of Section 18 hereof.

## **Section 18. Credit.**

Any applicant who shall perform, at its own expense and the consent and agreement of the New Garden Township Board of Supervisors, off-site improvement, as herein defined, shall be eligible for a credit from a transportation impact fee otherwise due. 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 of Supervisors at its sole discretion may direct the Township to provide the applicant:

- A. 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 to accommodate an improvement contained in the Transportation Capital Improvement Plan. 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.
- B. A credit against the Transportation Impact Fee otherwise due for the value of construction of road improvements contained in the Roadway Sufficiency Analysis and Transportation Capital Improvements 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.
- C. 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:
  1. 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;
  2. The Township shall review the Improvement Agreement, verify costs and time schedules, determine if the improvement is contained in the Roadway Sufficiency Analysis and Transportation Capital Improvements Plan, and determine the amount of the applicable credit for such improvement to be applied against the otherwise due transportation impact fee; and
  3. 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.
- D. In no instance shall any credit authorized by the Board pursuant to this Article exceed the amount of the transportation impact fee actually due.

## **Section 19. Refunds.**

Transportation impact fees collected pursuant to this chapter shall be refunded, together with interest earned thereon, to the payor of the transportation impact fees under the following circumstances:

- A. In the event New Garden Township terminates or completes the Roadway Sufficiency Analysis and Transportation Capital Improvements Plan and there remains at the time of termination or completion undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's transportation impact fee payment plus interest earned bears to the total transportation impact fees collected plus interest. New Garden Township shall provide written notice by certified mail to each person who previously paid the fees and remain undisbursed that such person's proportionate share of the fund balance 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 fees to New Garden Township. In the event that any of the funds remain unclaimed following one year after the notice, New Garden Township shall be authorized to transfer any funds so remaining to any other fund in New Garden Township without any further obligation to refund said funds. It shall be the responsibility of the payor to provide New Garden Township at all times with a current address for such notice.
- B. In the event New Garden Township fails to commence construction (i.e., earthwork or other municipally defined action) within three years of the scheduled construction dates of the project as set forth in the Roadway Sufficiency Analysis and Transportation Capital Improvement Plan, New Garden Township shall refund the portion of the transportation impact fee paid by any payor making written request therefor which is attributable to said project, with accumulated interest; provided, nevertheless, that 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.
- C. In the event that, upon completion of any road improvements project, the actual expenditure for the project is less than 95% of the budgeted costs for such project, New Garden 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 or persons who paid the impact fees for such improvements.
- D. In the event the development for which transportation impact fees were paid has not commenced prior to the expiration of the building permit issued therefor, the transportation impact fees paid with accumulated interest shall be refunded to the payor. Further, if a building permit after issuance is altered in such a way as to reduce the amount of the transportation impact fee due, 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.

## **Section 20. Transportation impact fee as additional and supplemental requirement.**

The transportation impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by New Garden Township on the subdivision of development of

land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the New Garden Township 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, nevertheless, that a property owner may be required to pay, pursuant to New Garden Township ordinances, regulations or policies, for other public facilities in addition to the transportation impact fee as provided herein.

#### **Section 21. 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 Article; 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 22. Appeals.**

Any person required to pay an impact fee shall have the right to contest the land use assumptions, the development and implementation of the transportation capital improvement program, the imposition of impact fees, the periodic updating of the transportation capital improvement program, the refund of impact fees and all other matters relating to impact fees, including the constitutionality or validity of the impact fee ordinance by filing an appeal with the court of common pleas.

A master may be appointed by the court to hear testimony on the issues and return the record and a transcript of the testimony, together with a report and recommendations, or the court may appoint a master to hold a non-record hearing and to make recommendations and return the same to the court, in which case either party may demand a hearing de novo before the court. Any cost incurred by parties in such an appeal shall be the separate responsibility of the parties.

#### **Section 23. Severability**

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or part hereof. It is hereby declared as the intent of the Board of the Supervisors of New Garden Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

#### **Section 24. Repealer**

All Ordinances or part of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

**Section 25. Effective Date**

The Ordinance shall become effective on the date of enactment.

**ENACTED AND ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2025 by the Board of Supervisors of New Garden Township.

**BOARD OF SUPERVISORS  
NEW GARDEN TOWNSHIP**

By: \_\_\_\_\_  
Ted Gallivan, Chairman

\_\_\_\_\_  
Stephen Allaband, Vice-Chairman

\_\_\_\_\_  
David Unger, Member

ATTEST:

\_\_\_\_\_  
Kristie Brodowski, Member

\_\_\_\_\_  
Christopher Himes, Secretary

\_\_\_\_\_  
Troy Wildrick, Member