

**ORDINANCE NO. 15-03**

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 2; ARTICLE VI, IMPACT FEES, DIVISION 2, ROADS IMPACT FEES AND DIVISION 6, SCHOOL IMPACT FEES. THE AMENDMENTS PROPOSE TO REVISE THE ROAD AND SCHOOL IMPACT FEE SCHEDULES. IN ADDITION, REVISIONS ARE PROPOSED TO PROVISIONS GOVERNING THE USE OF ROAD IMPACT FEES FOR CONSTRUCTION OF ALTERNATIVE ROADWAY CAPACITY IMPROVEMENTS; PROVIDING FOR CONFLICTS OF LAW, CODIFICATIONS AND SCRIVENER'S ERRORS, PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(t) authorizes counties to adopt ordinances for the exercise of its powers; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and,

WHEREAS, Goal 39 of the Lee Plan mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts and protect and preserve public transportation facilities; and,

WHEREAS, the Florida Legislature adopted the Florida Impact Fee Act finding that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth and further finding that impact fees are an outgrowth of the home rule power of local governments to provide certain services within its jurisdiction (Florida Statutes section 163.31801 et seq.); and

WHEREAS, the Board of County Commissioners has the authority to adopt impact fees pursuant to Article VIII of the Constitution of the State, Florida Statutes, Chapter 125 and Sections 163.3201, 163.3202, and 380.06(16); and,

WHEREAS, Policy 2.3.2. of the Lee County Comprehensive Plan (Lee Plan) provides that the cost for the provision and expansion of services and facilities that

benefit new development will be borne primarily by those who benefit, and that such funding may include impact fees; and,

WHEREAS, Lee Plan Policy 38.1.1. requires the County to maintain an effective and fair system of impact fees to ensure that development creating additional impacts on arterial and collector roads pays an appropriate fair share of the costs to mitigate off-site impacts; and,

WHEREAS, pursuant to Lee Plan Policy 38.1.3., road impact fees must be reviewed regularly and updated when necessary to reflect travel characteristics, construction, and right-of-way costs and to determine if the capital impacts of new growth are met by the fees; and,

WHEREAS, Lee Plan Policy 38.1.7. provides that the use of road impact fee revenues to improve State roads is an acceptable application of those funds; and,

WHEREAS, Lee Plan Objective 39.1. requires the County to maintain and enforce development regulations to ensure that impacts of development approvals occur concurrently with adequate roads, and to achieve maximum safety, efficiency, and cost effectiveness; and,

WHEREAS, Lee Plan Policy 66.1.3: requires Lee County to maintain and regularly update a school impact fee; and,

WHEREAS, pursuant to Lee Plan Policy 95.1.3., the “minimum acceptable level of service” is the basis for roadway facility design, for setting impact fees, and, where applicable, for the operation of the Concurrency Management System; and,

WHEREAS, Lee Plan Policy 95.3.1. states that impact fees will be set to capture a substantial portion of the full and real cost of the designated facility, and will be reviewed and updated regularly; and,

WHEREAS, Lee Plan Policy 135.1.5. requires the County to provide financial and technical support, including the payment, waiver, or reduction of impact fee for affordable housing; and,

WHEREAS, Land Development Code, Section 2-266(f), requires the Board of County Commissioners to review the road impact fee schedule every three years and update when necessary; and,

WHEREAS, the Board of County Commissioners approved a contract with Duncan and Associates, Inc., to review and update the County road and school impact fee schedules; and,

WHEREAS, the studies prepared by Duncan and Associates, Inc., entitled “Road Impact Fee Study - Lee County, Florida”, dated January 2015, and School Impact Fee

Study for Lee County, Florida, dated January 2015, form the basis of the proposed amendments herein and are hereby adopted by the Board; and,

WHEREAS, the Duncan and Associates, Inc., studies and revised fee schedule relies upon the best available technical data at the time the study was prepared and the use of sophisticated methodology to determine the impacts of development in an effort to establish an appropriate level of impact fees based on most recent localized data; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on February 13, 2015, and recommended their adoption; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on February 11, 2015, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 23, 2015, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

**SECTION ONE: AMENDMENT TO LDC CHAPTER 2- ADMINISTRATION**

Lee County Land Development Code Chapter 2 is amended as follows with strike through identifying deleted text and underline identifying new text.

**CHAPTER 2 ADMINISTRATION  
ARTICLE VI. IMPACT FEES  
DIVISION 2. ROADS IMPACT FEE**

**Sec. 2-266. - Computation of amount.**

(a) At the option of the feepayer, the amount of the roads impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not usable, interior, rentable, noncommon or other forms of net square footage. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites permitted by the applicable final development order. The reference in the schedule to mine refers to the number of cubic yards excavated.

## ROADS IMPACT FEE SCHEDULE

Land Use Type	Unit	Roads Impact Fee Due at 100% of Actual Full Cost
<b>Residential</b>		<b>Local Roads</b>
Single-family residence	Dwelling unit	\$6,701 <del>\$6,458</del>
Multiple-family building, duplex, townhouse, two-family attached	Dwelling unit	\$4,659 <del>\$4,517</del>
Mobile home/RV park	Pad/park site	\$3,499 <del>\$3,391</del>
Elderly/disabled housing	Dwelling unit	\$2,435 <del>\$2,333</del>
Adult Congregate Living facility (ACLF)	Dwelling unit	\$1,512 <del>\$1,369</del>
Hotel/motel or timeshare	Room/unit	\$3,864 <del>\$3,745</del>
<b>Retail Commercial</b>		
Shopping center	1,000 sq. ft.	\$7,933 <del>\$7,648</del>
Bank	1,000 sq. ft.	\$17,187 <del>\$16,665</del>
Car wash, self-service	Stall	\$3,800 <del>\$3,685</del>
Convenience store w/gas sales	1,000 sq. ft.	\$29,116 <del>\$28,228</del>
Golf course (open to public)	Acre	\$1,907 <del>\$1,850</del>
Movie theater	1,000 sq. ft.	\$16,769 <del>\$16,259</del>
Restaurant, standard	1,000 sq. ft.	\$14,688 <del>\$14,240</del>
Restaurant, fast food	1,000 sq. ft.	\$32,028 <del>\$31,053</del>
<b>Office/Institutional</b>		
Office	1,000 sq. ft.	\$5,355 <del>\$5,191</del>
Hospital	1,000 sq. ft.	\$7,576 <del>\$5,887</del>
Nursing home	1,000 sq. ft.	\$3,481 <del>\$3,384</del>
Church	1,000 sq. ft.	\$3,851 <del>\$3,733</del>
Day care center	1,000 sq. ft.	\$10,705 <del>\$9,699</del>
Elementary/secondary school (private)	1,000 sq. ft.	\$1,897 <del>\$1,838</del>
<b>Industrial</b>		
Industrial park or general industrial	1,000 sq. ft.	\$4,626 <del>\$4,407</del>
Warehouse	1,000 sq. ft.	\$2,366 <del>\$2,294</del>
Warehouse, High-Cube	1,000 sq. ft.	\$956 <del>\$1,083</del>
Mini-warehouse	1,000 sq. ft.	\$1,125 <del>\$1,090</del>
Mine	Cubic Yard	\$.026

Notes: (1) through (4) remain unchanged.

**Sec. 2-264. - Definitions and rules of construction.**

*Subsection a remains unchanged.*

(b) The following words, terms and phrases, when used in this division, will have the meanings ascribed to them in this subsection and the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation, except where the context clearly indicates a different meaning.

*Capital improvements* means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any non-site-related road construction project, including but not limited to:

- (1) Constructing new through lanes;
- (2) Constructing new turn lanes;
- (3) Constructing new frontage or access roads;
- (4) Constructing new bridges;
- (5) Constructing new drainage facilities in conjunction with roadway construction;
- (6) Purchasing and installing traffic signalization (including both new installations and upgrading signalization);
- (7) Constructing curbs, medians, sidewalks, bicycle paths and shoulders in conjunction with roadway construction;
- (8) Relocating utilities to accommodate new roadway construction; and
- (9) Constructing on-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular capacity of the existing network of approved roads.
- (10) Alternative roadway capacity improvements that accommodate vehicle trips by providing alternative travel modes and by taking pedestrians, bicyclists, and buses out of travel lanes including, but not limited to, sidewalks and other pedestrian improvements, bikeways, and bus pull out lanes along arterial and collector roads.

*All other definitions remain unchanged.*

**Sec. 2-270. - Use of funds.**

(a) Funds collected from roads impact fees must be used for the purpose of capital improvements to approved roads. Such improvements must increase roadway capacity and be of the type made necessary by the new development. Funds may not be used for periodic or routine maintenance as defined in F.S. § 334.03(19) and (24). Except as provided in subsection (c) of this section, impact fee collections, including any interest earned thereon, but excluding administrative charges pursuant to subsection (d) of this section, must be used exclusively for capital improvements within the roads impact fee district from which funds were collected, or for projects in other roads impact fee districts that are of direct benefit to the roads impact fee district from which the funds

were collected. These impact fee funds must be segregated from other funds and expended as provided in the appropriate Administrative Code. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements to approved roads. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby must be divided and segregated, such that the amount of the proceeds reserved for road purposes bears the same ratio to the total funds collected that the roads impact fee funds used or pledged bear to the total funds used or pledged.

*Subsections (b) through (d) remain unchanged.*

**Sec. 2-275. - Credits.**

(a) Credits are subject to the following:

(1) *Prohibition.* No credit will be given for:

- a. Site-related improvements,
- b. Local roads,
- c. Access streets needed to achieve site location standards for commercial development or for internal circulation unless required by the county pursuant to criteria in chapter 10.

(2) *Capital improvement to approved roads.* All capital improvements that increase roadway capacity for approved roads, except for those improvements deemed site-related pursuant to a participating municipality, state or county development or zoning approval, may generate roads impact fee credits in amounts to be established pursuant to subsection (a)(3) or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the county, unless otherwise provided for in an appropriate interlocal agreement. If the improvement is not site-related and is required under a participating municipality, state or county development or zoning approval, credits will be given to the extent required by law.

*Remaining provisions remain unchanged.*

**ARTICLE VI. IMPACT FEES  
DIVISION 6.SCHOOL IMPACT FEE**

**Sec. 2-405. - Computation of amount.**

(a) At the option of the Feepayer, the amount of the school impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home refers to the number of mobile homes or mobile home

park sites that are permitted by the applicable final development order or mobile home move on permit as appropriate.

Land Use Type	School Impact Fee per Unit
Single-family residence	<del>\$3924.00</del> <u>\$4,540</u>
Multiple-family building, duplex, two-family attached or townhouse	<del>\$1223.00</del> <u>\$1,354</u>
Mobile home	<del>\$699.00</del> <u>\$1,231</u>

*Subsections (b) through (d) remain unchanged.*

**SECTION TWO: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

**SECTION THREE: SEVERABILITY**

It is the Board of County Commissioner’s intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

**SECTION FOUR: CODIFICATION AND SCRIVENER’S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word “ordinance” can be changed to “section”, “article” or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

**SECTION FIVE: MODIFICATION**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

**SECTION SIX: EFFECTIVE DATE**

Except as provided below, this ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. All increases in impact fee rates will become effective 90 days after adoption of this Ordinance. Reductions in impact fee rates will become effective on the effective date of this Ordinance.

Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioner Pendergrass. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 3<sup>rd</sup> day of March, 2015.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Marceia Wilson  
Deputy Clerk

BY: Brian Hamman  
Brian Hamman, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

Michael D. Jacob  
Michael D. Jacob  
Managing Assistant County Attorney  
County Attorney's Office





FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

March 5, 2015

Honorable Linda Doggett  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Marcia Wilson

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy for Lee County Ordinance No. 15-03, which was filed in this office on March 5, 2015.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

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