

ORDINANCE NO. 18-16

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 2; PERTAINING TO IMPLEMENTATION OF IMPACT FEE UPDATES; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND EFFECTIVE DATE

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; 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 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, LDC, Chapter 2, Article VI, establishes Lee County's impact fee base rate schedules and regulations applicable to new development for Roads, Regional and Community Parks, Fire and Emergency Medical Services, and Schools; and,

WHEREAS, Florida Statutes section 163.31801(a) requires that the calculation of impact fees be based on the most recent and localized data; and,

WHEREAS, Lee County wishes to provide for structured implementation of the new base rate schedules adopted by the Board of County Commissioners at its March 6, 2018, meeting, as well as for all future base rate schedule updates.

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

## SECTION ONE: AMENDMENT TO LDC CHAPTER 2

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 1. GENERALLY

#### Sec. 2-232.—Impact Fee Schedule Amendments.

- (a) The impact fee schedules set forth in this Article VI will be administratively reviewed and re-analyzed every five years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedules supported by the review and re-analysis. At the county's request, all participating districts and municipalities will provide the documentation necessary to enable the county to properly review and update the fee schedules.
- (b) Impact fee schedule amendments will take effect as follows:
- (1) If an impact fee schedule amendment causes a particular base fee to decrease, the reduction will take effect upon filing the amendment with the Secretary of State.
- (2) If an impact fee schedule amendment causes a particular base fee to increase, the increase will take effect 90 days after the date the amendment is adopted, provided that—
- a. An Impact Fee Permit Application submitted prior to the effective date of the amendment will be assessed based on the fee schedules in effect at the time the application is submitted if the permit is issued within 90 days after the effective date of the amendment.
- b. An Impact Fee Permit Application submitted prior to the effective date of the amendment, but not issued within 90 days after the effective date of the amendment, will be assessed based on the amended impact fee schedules, subject to the following:
- (i) The Director may accept payment based on the fee schedule in effect at the time of application in cases where the following conditions are satisfied:
1. The Impact Fee Permit Application was properly submitted and sufficient for review prior to the effective date of the amendment;

2. A governmental action or failure to act in a timely manner caused the issuance of the permit to be delayed beyond 90 days after the effective date of the amendment; and
3. The applicant submits a written request to the Director specifying the basis for the request.
  - (ii) The Director's decision to grant or deny such request must be in writing, is based solely on the discretion of the Director, and is not subject to appeal.
  - (iii) The ability of the Director to grant such a request terminates 120 days after the effective date of the amendment.
- c. All Impact Fee Permit Applications submitted after the effective date of the amendment will be assessed based on the amended impact fee schedules.
- d. For purposes of this section, an "Impact Fee Permit Application" is an application for a building permit, mobile home move-on permit, mining development order, golf course development order, recreational vehicle development order, or any other permit or development order for which impact fees are applicable.

## DIVISION 2. ROADS IMPACT FEE

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

*Notes: (a) and (b) remain unchanged.*

- ~~(e) The fee schedule set forth in section 2-266 was amended on September 23, 2008. The fee schedule in effect prior to September 23, 2008, will remain in effect until close of business December 31, 2008 when the new fees take effect.~~

*Notes: (d) through (g) are renumbered accordingly.*

- ~~(h) The impact fee schedule set forth in section 2-266(a) will be administratively reviewed and re-analyzed every five years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and re-analysis.~~

## DIVISION 3. REGIONAL PARKS IMPACT FEE

### Sec. 2-306. – Computation of amount.

*Notes: (a) through (f) remain unchanged.*

~~(g) The impact fee schedule set forth in section 2-306(a) will be administratively reviewed and reanalyzed every five years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis.~~

#### **DIVISION 4. COMMUNITY PARKS IMPACT FEE**

##### **Sec. 2-346. - Computation of amount.**

*Notes: (a) through (f) remain unchanged.*

~~(g) The impact fee schedule set forth in section 2-346(a) will be administratively reviewed and reanalyzed every five years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis.~~

#### **DIVISION 5. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES IMPACT FEE**

##### **Sec. 2-385. – Imposition.**

*Notes: (a) through (c) remain unchanged.*

~~(d) — The increased fee schedule adopted in section 2-386 will automatically become effective within the Lee County Airports Fire Department service area in accordance with subsection (e).~~

~~(e) — The fee schedule in effect prior to April 11, 2006, will remain in effect until the new fees take effect as follows:~~

~~(1) — *Decreases.* Decreases in the existing fee for a use type will be effective April 11, 2006.~~

~~(2) — *Increases.*~~

~~a. — A building permit or mobile home move-on permit or recreational vehicle park development order application submitted on or before June 11, 2006, will be assessed an impact fee based upon the fee schedule applicable on April 10, 2006, but only if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before September 11, 2006.~~

~~b. — A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after June 11, 2006, or any building permit or mobile home move-on permit or development order issued after September 11, 2006, will be subject to the amended impact fee schedule.~~

c. — After September 11, 2006, the Director may accept payment according to the fee schedule in effect prior to June 11, 2006 only if the following conditions are met. The Director's decision is not subject to appeal under section 34-145 of this Code.

1. — The application for the permit or development order must have been properly submitted and sufficient for review on or before June 11, 2006; and,

2. — The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond September 11, 2006; and,

3. — The applicant submits a written request to the Director specifying the reasons for the request; and,

4. — The Director's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and,

5. — The ability and authority to accept payments under this subsection will terminate on October 11, 2006.

~~(d)(3)~~ *When due and payable.* Under this article, impact fees become due and payable at the time of permit issuance. For purposes of this division, a building permit or mobile home move-on permit is considered "issued" when the permit meets all of the following criteria:

1. a. The permit is approved by the county;
2. b. Has been picked up by the owner or his agent; and
3. c. All applicable fees have been paid.
4. d. The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to RV parks.

#### **Sec. 2-386. - Computation of amount.**

*Notes: (a) through (e) remain unchanged.*

- ~~(f)~~ The impact fee schedules set forth in ~~section 2-386~~ will be reviewed every five years and updated if necessary. At the county's request, all participating districts and municipalities will provide the documentation necessary to enable the county to properly review and update the fee schedules.

### **DIVISION 6. SCHOOL IMPACT FEE**

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

*Notes: (a) through (c) remain unchanged.*

~~(d) The impact fee schedule set forth in subsection 2-405(a) will be administratively reviewed and re-analyzed every five years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule consistent with the results of the review and re-analysis.~~

## **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. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or 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**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

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

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

DULY PASSED AND ADOPTED this 1st day of May, 2018.

ATTEST:  
LINDA DOGGETT, CLERK

BY: *Linda Doggett*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *Cecil Pendergrass*  
Cecil Pendergrass, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: *Chad Smith*  
Office of the County Attorney



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

May 3, 2018

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

Attention: Theresa King

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 18-16, which was filed in this office on May 3, 2018.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

**RECEIVED**  
By tking at 11:33 am, May 03, 2018