

LEE COUNTY ORDINANCE NO. 01-13

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTER 2, ARTICLE VI (IMPACT FEES); AMENDING DIVISION 2 (ROADS IMPACT FEE), AMENDING PAYMENT (§2-267); USE OF FUNDS (§2-270); REFUND OF FEES PAID (§2-271); EXEMPTIONS (§2-274); CREDITS §2-275); AMENDING DIVISION 3 (REGIONAL PARKS IMPACT FEE), AMENDING APPLICABILITY OF DIVISION (§2-302); INTENT AND PURPOSE OF DIVISION (§2-303); DEFINITIONS OF "BUILDING PERMIT", "CAPITAL IMPROVEMENT", "COUNTY ADMINISTRATOR" AND "MOBILE HOME" (§2-304); AMENDING IMPOSITION (§2-305); AMENDING COMPUTATION OF AMOUNT (§2-306); PAYMENT (§2-307); TRUST FUND ACCOUNT (§2-309); USE OF FUNDS (§2-310); REFUND OF FEES PAID (§2-311); EXEMPTIONS AND CREDITS (§2-312); APPEALS (§2-313); ENFORCEMENT OF DIVISION; PENALTY; FURNISHING FALSE INFORMATION (§2-314); AMENDING DIVISION 4 (COMMUNITY PARKS IMPACT FEE); AMENDING APPLICABILITY (§2-342); AMENDING DEFINITIONS OF "BUILDING PERMIT", "COUNTY ADMINISTRATOR" AND "MOBILE HOME" (§2-344); AMENDING IMPOSITION (§2-345); COMPUTATION OF AMOUNT (§2-346); PAYMENT (§2-347); TRUST FUND ACCOUNTS (§2-349); USE OF FUNDS (§2-350); REFUND OF FEES PAID §2-351); EXEMPTIONS AND CREDITS (§2-352); APPEALS (§2-353); ENFORCEMENT OF DIVISION; PENALTY; FURNISHING FALSE INFORMATION (§2-354); AMENDING DIVISION 5 (FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES IMPACT FEE); AMENDING PAYMENT (§2-387); AMENDING USE OF FUNDS (§2-390); REFUND OF FEES PAID (§2-391); EXEMPTIONS (§2-394); CREDITS (§2-395); APPEALS (§2-396); ENFORCEMENT OF DIVISION; PENALTY; FURNISHING FALSE INFORMATION (§2-397); AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

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

WHEREAS, the Board of County Commissioners has the authority to adopt impact fee regulations pursuant to Article VIII of the Constitution of the State, F.S. Ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16); 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, the Board initially adopted the Parks impact fee regulations and an impact fee schedule in 1985;

WHEREAS, the Board formally divided Parks impact fees into separate regional and community parks impact fees in 1989; and

WHEREAS, the most recent revision to the fee schedule for Parks impact fees was last performed in 1990, based upon the best information available at that time; and

WHEREAS, in 2000, the Board, recognizing that the Parks impact fee schedule has not been updated since 1990, approved a contract with Duncan Associates for the review and updating of Parks impact fee regulations; and

WHEREAS, the *Park Impact Fee Update Prepared for Lee County, Florida* by Duncan Associates, dated June, 2001, forms the basis of the proposed amendments to the rate structure for Community Park Impact Fees and Regional Park Impact Fees; and

WHEREAS, the Park Impact Fee Update study generated better and more competent data allowing the use of a more sophisticated methodology to determine the impacts of development and to evaluate and establish appropriate impact fees; and

WHEREAS, improved administrative provisions for implementation of impact fee programs have been recommended with regard to administrative fees, Consumer Price Indexing of impact fee credits and exemptions for destroyed, demolished or removed structures; and

WHEREAS, the recommended administrative provisions should be applied uniformly to the administration of impact fees for the County's impact fee programs of Roads, Regional Parks, Community Parks, Fire and EMS; and

WHEREAS, on July 13, 2001, the Land Development Code Advisory Committee completed their reviewed and approved the proposed amendments to Land Development Code Chapter 2 regarding Community and Regional Parks Impact Fees; and

WHEREAS, on July 11, 2001, the Executive Regulatory Oversight Committee (EROC) reviewed the proposed amendments and indicated their fundamental opposition to the use of impact fees in general; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on June 25, 2001, and found them consistent with the Lee Plan.

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

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2

Lee County Land Development Code Chapter 2, Article VI, Division 2, 3, 4 and 5 are amended to read as follows with strike through identifying deleted language and underline identifying new language:

CHAPTER 2

ARTICLE VI. IMPACT FEES

DIVISION 2. ROADS IMPACT FEE

Sec. 2-267. Payment.

- (b) In lieu of cash, up to ~~97~~ 100 percent of the roads impact fees may be paid with credits created in accordance with the provisions of sections 2-272 through 2-275.

Sec. 2-270. Use of funds.

- (d) The county or the participating municipality collecting roads impact fees is entitled to ~~retain charge and collect an amount equal to~~ up to three percent of roads impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this division. This administrative charge is in addition to the impact fee amount required by this division. The applicant is responsible for payment of the administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-271. Refund of fees paid.

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or voluntarily surrendered and therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has commenced, then the feepayer is entitled to a refund of the roads impact fee paid as a condition for its issuance, except that up to three percent of the impact fee paid will be retained as an administrative fee to offset the cost of processing the refund. ~~Subject to the limitations set forth in subsection (b) of this section, the feepayer is entitled to a refund equal to 97 percent of the roads impact fee paid. This administrative fee is in addition to the charge collected at the time of fee payment.~~ No interest will be paid to the feepayer on refunds due to noncommencement.
- (b) ~~If a permit or development order expires, then a refund of the roads impact fee is allowed, if no construction has commenced, to the extent the fee was paid in cash (i.e., noncredit~~

payment). However, the three percent administrative fee described in subsection (a), will be deducted from the amount eligible for refund prior to the issuance of the roads impact fee refund.

- (e) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the roads impact fee was paid will, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

Sec. 2-274. Exemptions.

- (a) The following are exempt from payment of the roads impact fee:
 - (3) The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985. However, if any such building, mobile home, park trailer or structure is destroyed, demolished or removed from the property voluntarily or involuntarily; then any replacement will be required to pay the appropriate impact fee, unless:
 - a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
 - b. construction commences within said 5-year period; and,
 - c. such construction continues in good faith without abandonment, expiration or loss of permits.
 - (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the roads impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order ~~which that~~, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.

Sec. 2-275. Credits.

- (a) Credits are subject to the following:
 - (5) Transferability. Roads impact fee credits created on or after October 1, 1989 ~~are transferable. Transferable credits must be in transferable form and~~ may be sold, assigned or conveyed as set forth in the county administrative code. Credits may be used to pay or offset roads impact fees in the same roads impact fee district in which they are earned, or in other districts directly benefitted by the capital improvements for which the credits were granted, and consistent with any interlocal agreements made with participating municipalities. Credits may not be used outside the district earned unless the proposed use is found to be in compliance with this division by the county attorney and the director of the county department of transportation. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within ten years of the

date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the county's official record book. The creation date for credits pursuant to prepayment of fees under section 2-272 will be the date the prepayment is received by the county. If roads impact fees are increased before the credits are used, the unused transferable credits ~~will be increased at the time they are used in the same percentage that the fee prescribed in section 2-266 is increased for the particular listed use, rounded to the nearest dollar. For example, see Exhibit A of Ordinance No. 90-24, on file in the county clerk's office , when used to pay for the impacts of a particular use listed in section 2-266, will be increased at the time they are used, in the same percentage that the Consumer Price Index--All Urban Consumers (CPU-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created.~~ If roads impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within ten years of issue will ~~be canceled by the building official~~ expire.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.

DIVISION 3. REGIONAL PARKS IMPACT FEE

Sec. 2-301. Statutory authority.

The Board of County Commissioners has the authority to adopt this division pursuant to article VIII of the constitution of the state, F.S. ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16).

Sec. 2-302. Applicability of division.

This division ~~shall apply to~~ applies in the unincorporated areas of the county and within any municipality ~~which that~~ enters into an interlocal agreement with the county to collect regional parks impact fees during the term of such agreement.

Sec. 2-303. Intent and purpose of division.

- (a) This division is intended to implement and be consistent with the Lee Plan.
- (b) The purpose of this division is to regulate the use and development of land ~~so as~~ to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide regional parks in the county as contemplated by the Lee Plan.

Sec. 2-304. Definitions.

The following words, terms and phrases, when used in this division, ~~shall~~ will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means that officer who is so defined in chapter 6, article II. Within any participating municipality, the term "building official" means that person whose duties and authority are similar to that of the county's building official, regardless of the title given such person.

Building permit means an official document or certification ~~which is~~ issued by the building official ~~and which authorizes~~ authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term ~~shall~~ specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance. The terms "building permit" and "certificate of occupancy permit" also mean those municipal permits ~~which~~ that are equivalent to these county permits, regardless of the names by which they are called within a municipality.

Capital improvement means land acquisition, site improvement, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded regional park, buildings and equipment. Off-site improvements may also include bikeways ~~which~~ that connect to the park facility. Capital improvements do not include maintenance and operations.

County ~~administrator~~ manager means the county ~~administrator~~ manager, or the county or municipal officials that ~~he~~ the county manager may designate to administer the various provisions of this division.

Duplex has the same meaning given it in chapter 34.

Feepayer means a person applying to the county, or to any participating municipality, for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for a type of land development activity specified in section 2-306(a), regardless of whether the person owns the land.

Hotel/motel has the same meaning given it in chapter 34.

Lee Plan means the county comprehensive plan adopted pursuant to F.S. ch. 163, as amended from time to time.

Living unit has the same meaning given it in chapter 34.

Mobile home has the same meaning given it in chapter 34. Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee calculation purposes.

Mobile home move-on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. It also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district.

Multiple-family building has the same meaning given it in chapter 34.

Park trailer has the same meaning given it in chapter 34.

Participating municipality means any municipality ~~which~~ that enters into an interlocal agreement with the county to collect within the municipality the impact fees imposed by this division.

Private recreational facility has the same meaning given it in chapter 34.

Recreational vehicle has the same meaning given it in chapter 34.

Recreational vehicle development order means a final development order, as that term is used in chapter 10, permitting the placement of recreational vehicles on any area of land. It also means those municipal permits or orders ~~which are~~ equivalent to a recreational vehicle development order, regardless of the names by which those permits are called within a municipality.

Regional park means a tract of land designated and used by the public for active and passive recreation. A regional park draws users from a larger area than a community park, frequently from the entire county and beyond, by providing access to especially attractive natural resources, amenities and specialized activities. The Lee Plan's regional park standards are based upon several subclassifications of regional parks: district parks, nature preserves and special area regional parks. It specifically includes municipally owned parks when they are used as regional parks.

Single-family residence has the same meaning given it in chapter 34.

Timeshare has the same meaning given it in chapter 34.

Townhouse has the same meaning given it in chapter 34.

Two-family attached has the same meaning given it in chapter 34.

Sec. 2-305. Imposition.

- (a) Except as provided in section 2-312, any person who, after September 16, 1985, seeks to develop land by applying to the county or any participating municipality for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order ~~to make for the purpose of making~~ an improvement to land for one of the uses ~~which is~~ specified in section 2-306 ~~shall be~~ is required to pay a regional parks impact fee in the manner and amount set forth in this division.
- (b) No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to section 2-306 ~~shall may~~ be issued by the county or any participating municipality unless and until the regional parks impact fee required by this division has been paid.
- (c) In the case of structures, mobile homes or park trailers ~~which that~~ are moved from one location to another, a regional parks impact fee ~~shall will~~ be collected for the new location if the structure, mobile home or park trailer ~~is a type~~ constitutes one of the land development uses listed in section 2-306, regardless of whether regional parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an

equivalent use, no regional parks impact fee shall be is owed for the replacement use. In every case, the burden of proving past payment of regional parks impact fees or equivalency of use rests with the feepayer.

Sec. 2-306. Computation of amount.

- (a) At the option of the feepayer, the amount of the regional parks impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites which are permitted by the applicable final development order.

<i>Land Use Type Living Unit</i>	<i>Total Regional Parks Impact Fee per Unit at 100% of Actual Full Cost (rounded to nearest dollar)</i>	
Single-family residence	\$253.00	<u>\$461</u>
Multiple-family building, duplex, two-family attached or townhouse	\$131.00	<u>\$341</u>
Mobile home not in mobile home park	\$210.00	<u>\$461</u>
Timeshare	\$228.00	<u>\$341</u>
Hotel/motel room	\$179.00	<u>\$230</u>
Mobile Home Pad Site/Recreational Vehicle Park Site	\$199.00	<u>\$322</u>

Note: The fee schedule in effect prior to the adoption of this ordinance will be deleted from the LDC. As of September 15, 2001, this predecessor fee schedule will no longer be of any force or effect, except as to determining fees for building permits issued prior to September 15, 2001, or as otherwise indicated below.

Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or before September 14, 2001 will be assessed regional park impact fees based upon the fee schedule applicable on August 28, 2001, if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before two months after September 15, 2001.

Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or after September 15, 2001 will be subject to the amended impact fee schedule. All permits and development orders issued after November 15, 2001 will be assessed impact fees in accordance with the amended impact fee schedule regardless of when the application was submitted to the county.

Under this Article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit meets all of the following criteria:

- (1) the permit is approved by the County;
- (2) has been picked up by the owner or his agent; and,
- (3) all applicable fees have been paid.

[Also, NOTE: 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.]

- (b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the regional parks impact fee ~~shall~~ will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, ~~should the change of use, redevelopment or modification result in a net decrease, no impact fee refunds or credits for past impact fees paid shall be made or created~~ will be granted if a net decrease results.
- (c) If the regional parks impact fee has been calculated and paid based on error or misrepresentation, it ~~shall~~ will be recalculated and the difference refunded to the original feepayer or ~~paid~~ collected by the county, whichever is applicable. If regional parks impact fees are owed, no participating municipality or county permits of any type may be issued for the building or structure in question, or for any other ~~part~~ portion of a development of which the building or structure in question is a part, ~~while the until impact fees remain unpaid, and the~~ are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.
- (d) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, ~~at his option,~~ opt to submit evidence to the county ~~administrator~~ manager indicating that the fees set out in subsection (a) of this section are not applicable to the particular development. Based upon convincing and competent evidence, which ~~shall~~ must be prepared and submitted in accordance with the county administrative code, the county ~~administrator~~ manager may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the Lee Plan for regional parks.
- (e) The impact fee schedule set forth in section 2-306(a) will be administratively reviewed and reanalyzed every three 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.

See. 2-307. Payment.

- (a) The feepayer ~~shall~~ must pay the regional parks impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as provided in section 2-312. No building permit, mobile home move-on permit or recreational vehicle development order may be issued ~~for any development listed in section 2-306(a) by the county or any participating municipality until such~~ the impact fee has been paid, except as provided in section 2-312.

- (b) In lieu of cash, up to ~~97~~ 100 percent of the regional parks impact fee may be paid ~~by the use of~~ with credits ~~which are~~ created in accordance with the provisions of section 2-312(b).
- (c) Participating municipalities ~~shall~~ must remit regional parks impact fees to the county at least once each month, less any amounts retained pursuant to section 2-310(c), unless another method is specified in an appropriate interlocal agreement.
- (d) All funds collected pursuant to this division ~~shall~~ will be promptly transferred for deposit into the regional parks impact fee trust fund and used solely for the purposes specified in this division.

Sec. 2-308. Benefit district established.

For purposes of this division, there is hereby established a single countywide regional parks impact fee benefit district. Subdistricts may be created by interlocal agreement.

Sec. 2-309. Trust funds account.

- (a) There is hereby established a regional parks impact fee trust fund account. Regional parks impact fees collected prior to October 1, 1989, ~~shall~~ will be transferred and deposited into this fund account. Subsidiary accounts may be established for subdistricts created by interlocal agreement.
- (b) Funds withdrawn from this account must be used in accordance with the provisions of section 2-310.

Sec. 2-310. Use of funds.

- (a) Funds collected from regional parks impact fees ~~will~~ must be used for the purpose of capital improvements for regional parks. Regional parks impact fee collections, including any interest earned thereon, less administrative costs retained pursuant to subsection (c) of this section, ~~will~~ must be used exclusively for capital improvements or expansion within the county. These impact fee funds ~~will~~ must be segregated from other funds and ~~will~~ be expended in the order in which they are collected. 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 for regional parks. 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 ~~will~~ must be divided and segregated, ~~in such a fashion~~ that the amount of ~~such the~~ proceeds reserved for regional park purposes bears the same ratio to the total funds collected that the regional parks impact fee funds used or pledged bear to the total funds used or pledged.
- (b) Each fiscal period the county ~~administrator~~ manager ~~shall~~ will, after consultation with participating municipalities and consistent with the provisions of any inter-local agreements made with them, present to the Board of County Commissioners a proposed capital improvement program for regional parks, assigning funds, including any accrued interest, from the regional parks impact fee trust fund to specific regional park projects. Monies, including any accrued interest, not assigned in any fiscal period ~~will~~ must be retained in the

regional parks impact fee trust fund until the next fiscal period, except as provided by the refund provisions of this division.

- (c) The county or the participating municipality collecting regional parks impact fees is entitled to retain charge and collect an amount equal to up to three percent of the regional parks impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this division. This administrative charge is in addition to the impact fee amount required by this division and is not required to be used for purposes of capital improvements. The applicant is responsible for payment of the administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-311. Refund of fees paid.

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or ~~is~~ voluntarily surrendered, and ~~is~~ therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has ~~been~~ commenced, then the feepayer ~~shall be~~ is entitled to a refund of the regional parks impact fee paid in cash as a condition for its issuance, except that up to three percent of the impact fee paid shall will be retained as an administrative fee to offset the cost of processing the refund. This administrative fee is in addition to the administrative charge collected at the time of impact fee payment. Subject to the limitations set forth in subsection (b) of this section, the feepayer shall be entitled to a refund equal to 97 percent of the regional parks impact fee paid. No interest shall will be paid to the feepayer on refunds due to noncommencement.
- (b) ~~No refund shall be allowed for any expired permit or development order which was obtained with the use of credits, except for that portion of the regional parks impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (a) of this section shall be deducted from the portion of the fee which was not paid by credit.~~
- (c)(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the regional parks impact fee was paid ~~shall will~~, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

Sec. 2-312. Exemptions and credits.

- (a) The following are exempted from payment of the regional parks impact fee:
 - (1) Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
 - (2) The construction of accessory buildings or structures that will not produce additional living units.

- (3) The replacement of ~~a(n)~~ an existing, lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985. However, if any such building, mobile home, park trailer or structure is destroyed, demolished or removed from the property voluntarily or involuntarily; then any replacement will be required to pay the appropriate impact fee, unless:
 - a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
 - b. construction commences within said 5-year period; and,
 - c. such construction continues in good faith without abandonment, expiration or loss of permits.
- (4) The replacement of a building, mobile home, park trailer or structure, ~~which~~ that was constructed or placed after September 16, 1985, where the correct regional parks impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided that no additional living units will be produced than those produced by the original use of the land.
- (5) An amendment to a recreational vehicle development order, provided that the amendment does not increase the number of recreational vehicle units permitted.
- (6) A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
- (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the regional parks impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order ~~which~~ that, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
- (8) A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an additional living unit.
- (9) A building permit for residential construction in Harlem Heights, Charleston Park, or the Dunbar Enterprise Zone as those areas are described in Appendix J.
- (10) A building permit for construction included in the City of Sanibel's below market rate housing (BMRH) program established under the Sanibel land development code.
- (11) Any building permits issued in a redevelopment area or enterprise zone, or for low or moderate-income housing in the City of Fort Myers, but only when the permit is identified by the type of land use and by the land area or housing or redevelopment program in question by explicit language included in an appropriate interlocal agreement.

(b) Credits ~~shall be~~ are subject to the following:

- (1) No credit ~~shall~~ will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with section 2-306(d).

All other approved capital improvements for regional parks may generate regional parks impact fee credits in amounts to be established pursuant to subsection (b)(3) of this section 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 in an appropriate interlocal agreement, or unless the improvement is required under a participating municipality, state or county development or zoning approval, in which case credits ~~shall~~ must be given to the extent required by law.

- (2) The county will issue regional park impact fee credit for the value of critical occupied habitat in accordance with section 10-474(e)(3) when the size of habitat preserved on a given project exceeds the open space requirements of chapter 10.

- (3) ~~When a person requests that a credit be created he shall present~~ A request submitted for regional park construction must include cost estimates prepared by qualified professionals to be used by the county ~~administrator~~ manager in determining the amount of the credit ~~which the county administrator~~ manager will recommend ~~be authorized for approval~~ by the Board of County Commissioners.

- (4) ~~When a person proposes credit for land dedication, he shall present the following:~~ A request submitted for a land dedication credit must include the following:

1. a survey of the land to be dedicated, certified by a professional land surveyor or a registered land surveyor, each of whom are licensed in the state;
2. a specimen of the deed ~~which he proposes to use~~ that will be used to convey title to the appropriate governmental body;
3. an ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the county attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
4. property appraisals prepared by qualified professionals; and
5. ~~a certified copy of the most recent assessment of the property for tax purposes, to be used by~~ a document from the tax collector stating the current status of the property taxes. These submittals will be reviewed by the county administrator manager in making his the decision to approve credits or to make a recommendation for the amount of the credit which the to the Board of County Commissioners ~~may authorize.~~

In preparing their reports, appraisers ~~shall~~ will value, except where a dedication is made pursuant to a condition of zoning approval, the land at its then-current zoning and without any enhanced value ~~which that~~ could otherwise be attributed to improvements on adjacent lands. If the land in question is subject to a valid agreement, zoning approval or development order ~~which prescribes~~ prescribing a different valuation, the agreement, zoning approval or development order ~~shall~~ will control. If the dedication is made pursuant to a condition of zoning approval and is not a site-related improvement, and the zoning condition does not specifically prescribe otherwise, ~~then~~ the land value shall will be ~~valued~~ based upon the zoning of the land as it existed prior to the zoning approval ~~which contains~~ containing the condition of dedication. However, the county ~~administrator~~ manager retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates and/or property appraisals for those improvements or land dedications. In every case, regional parks impact fee credits ~~shall~~ must be calculated so as to be consistent with F.S. §380.06(16)(1985).

- (5) Credits for construction ~~shall~~ will be created when the construction is completed and accepted by the appropriate governmental body for maintenance, or when the feepayer posts security, as provided in this subsection, for the costs of such construction. Credits for land dedication ~~shall~~ must be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, an irrevocable letter of credit or an escrow agreement ~~shall~~ must be posted with the Board of County Commissioners, made payable to the county in an amount approved by the county ~~administrator~~ manager equal to 110 percent of the full cost of such construction. If the park construction project will not be constructed within one year of the acceptance of the offer by the county, the amount of the security ~~shall~~ will be increased by ten percent, compounded for each year of the life of the security. The security ~~shall~~ must be reviewed and approved by the county attorney's office prior to acceptance of the security by the county. If the park is to be owned by a participating municipality, the county may assign its rights in such security to the municipality if the municipality requests it and the law permits it.
- (6) Regional parks impact fee credits created on or after October 1, 1989, ~~shall~~ must be in transferable form and may be sold, assigned or otherwise conveyed as set forth in the county administrative code. They may be used to pay or otherwise offset regional parks impact fees required by this division, consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, such transferable credits must be used within six years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements, which were given in exchange for credits, were recorded in the county's official record book. If, during this period, regional parks impact fees are increased before credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in section 2-306, ~~also shall~~ will be increased at the time they are used, in the same percentage that the ~~fee prescribed in section 2-306 on the date~~

~~when the credit is used for the particular listed use in question has increased over the fee which was prescribed for the same use on the date when the transferable credit was created, rounded to the nearest dollar, as illustrated in the examples given in exhibit A of Ordinance No. 90-15, which is on file in the office of the county department of public resources~~ Consumer Price Index–All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. Credits not used during this period ~~shall~~ will expire. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.

- (7) Unless converted to transferable form pursuant to subsection (b)(7) of this section, regional parks impact fee credits created prior to October 1, 1989, ~~shall~~ must be used, if requested by a feepayer, on a first applied for, full credit basis. This rule ~~shall apply~~ applies to any permits requested on any part of the original tract, which for purposes of this subsection (b)(6) and subsection (b)(7) of this section means the area of land developed, or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that such credits are available. This ~~shall~~ will be done regardless of whether the feepayer owned the land at the time the credit was created and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule ~~shall~~ will apply regardless of whether the owner of the original tract has assigned or failed to assign such credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering these pre-October 1, 1989, credits, the building official ~~shall be entitled to~~ may rely upon apparent authority; ~~but he may, in his sole discretion, or may require such proof of ownership or agency as he deems~~ deemed necessary, the burden of proving ownership or agency lying exclusively on the person claiming it.
- (8) Unless prohibited by the conditions of a development order issued pursuant to F.S. ch. 380, or some other participating municipality, state or county development approval, credits created prior to October 1, 1989, may be converted to transferable form by mutual agreement between the county and the owner or owners of all of the undeveloped area of land remaining from the original tract of land developed or permitted for development as part of the dedication of land or improvements for which the credits were created. Such agreements ~~shall~~ will include a provision whereby the person who acquires transferable credits will defend and indemnify the county from any and all claims made by other persons asserting an interest in these pre-October 1, 1989, credits.
- (9) Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this division.
- (10) If required or specifically permitted by the terms of a development order adopted pursuant to F.S. ch. 380, or by an agreement made by the county pursuant to its home rule powers granted by article VIII of the constitution of the state and F.S. § 125.01, or by a development agreement made pursuant to F.S. §§ 163.3220-163.3243, the Florida Local Government Development

Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay regional parks impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the amount of regional parks impact fees prepaid and ~~shall~~ they will receive a credit or credits equal to such prepayment, subject to the express terms of such development order, agreement or development agreement.

- (c) Feepayers claiming credits ~~shall~~ must submit documentation sufficient to permit the building official to determine whether such credits claimed are due and, if so, the amount of such credits.
- (d) Exemptions or credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions or credits not so claimed ~~shall~~ will be deemed waived by the feepayer.
- (e) Once used, credits ~~shall~~ will be canceled and ~~shall~~ may not be reestablished even if the permit for which they were used expires without construction.

Sec. 2-313. Appeals.

Any decision made by the county ~~administrator~~ manager or his designee, or by the building official, in the course of administering this division may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. So as to provide continuity in the interpretation and administration of this division, every interlocal agreement made pursuant to this division ~~shall~~ must specifically incorporate this appeal procedure; and each participating municipality ~~shall~~ must agree to be bound by the results of the administrative appeal. These interlocal agreements ~~shall~~ must provide ~~further~~ that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal ~~shall~~ will be defended by the county, at its expense, unless the municipality elects to provide the defense of the case itself.

Sec. 2-314. Enforcement of division; penalty; furnishing false information.

A violation of this division ~~shall be~~ is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the county, or any ~~regional parks impact~~ feepayer, ~~shall have~~ has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the county ~~administrator~~ manager or his designee, the building official or any municipal official who is charged with the administration of this division on any matter relating to the administration of this division ~~shall~~ constitutes a violation thereof.

Secs. 2-315-2-340. Reserved.

DIVISION 4. COMMUNITY PARKS IMPACT FEE

Sec. 2-341. Statutory authority.

The Board of County Commissioners has the authority to adopt this division pursuant to article VIII of the constitution of the state, F.S. ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16).

Sec. 2-342. Applicability of division.

This division ~~shall apply to~~ applies in the unincorporated areas of the county and within any municipality ~~which that enters into an interlocal agreement with the county to collect community parks impact fees during the term of such agreement.~~

Sec. 2-343. Intent and purpose of division.

- (a) This division is intended to implement and be consistent with the Lee Plan.
- (b) The purpose of this division is to regulate the use and development of land ~~so as~~ to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide community parks in the county as contemplated by the Lee Plan.

Sec. 2-344. Definitions.

The following words, terms and phrases, when used in this division, ~~shall~~ will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Building official means that officer who is so defined in chapter 6, article II. Within any participating municipality, the term "building official" means that person whose duties and authority are similar to that of the county's building official, regardless of the title given such person.

Building permit means an official document or certification ~~which is~~ issued by the building official ~~and which authorizes~~ authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term ~~shall~~ specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance. The terms "building permit" and "certificate of occupancy permit" also mean those municipal permits ~~which that~~ are equivalent to these county permits, regardless of the names by which they are called within a municipality.

Capital improvement means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community park, buildings and equipment. Capital improvements include bikeways along the county road network that are designed and used primarily for active recreation. Capital improvements do not include maintenance and operations.

Community park means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways along the county road network that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. The Lee Plan's community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools and school parks. The term "community park" specifically includes school sites and municipally owned parks where they are used as community parks.

County administrator manager means the county administrator manager, or the county or municipal officials that he the county manager may designate to administer the various provisions of this division.

Duplex has the same meaning given it in chapter 34.

Feepayer means a person applying to the county, or to any participating municipality, for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for a type of land development activity specified in section 2-346(a), regardless of whether the person owns the land.

Hotel/motel has the same meaning given it in chapter 34.

Lee Plan means the county comprehensive plan adopted pursuant to F.S. ch. 163, as amended.

Living unit has the same meaning given it in chapter 34.

Mobile home has the same meaning given it in chapter 34. Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee calculation purposes.

Mobile home move-on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. It also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district.

Multiple-family building has the same meaning given it in chapter 34.

Park trailer has the same meaning given it in chapter 34.

Participating municipality means any municipality ~~which~~ that enters into an interlocal agreement with the county to collect within the municipality the impact fees imposed by this division.

Private recreational facility has the same meaning given it in chapter 34.

Recreational vehicle has the same meaning given it in chapter 34.

Recreational vehicle development order means a final development order, as that term is used in chapter 10, permitting the placement of recreational vehicles on any area of land. It also means those municipal permits or orders ~~which are~~ equivalent to a recreational vehicle development order, regardless of the names by which those permits are called within a municipality.

Single-family residence has the same meaning given it in chapter 34.

Timeshare has the same meaning given it in chapter 34.

Townhouse has the same meaning given it in chapter 34.

Two-family attached has the same meaning given it in chapter 34.

Sec. 2-345. Imposition.

- (a) Except as provided in section 2-352, any person who, after September 16, 1985, seeks to develop land by applying to the county or any participating municipality for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order ~~to make for the purpose of making~~ an improvement to land for one of the uses which is specified in section 2-346 ~~shall be~~ is required to pay a community parks impact fee in the manner and amount set forth in this division.
- (b) No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to section 2-346 ~~shall~~ may be issued by the county or by any participating municipality unless and until the community parks impact fee required by this division has been paid.
- (c) In the case of structures, mobile homes or park trailers ~~which that~~ are moved from one location to another, a community parks impact fee ~~shall~~ will be collected for the new location if the structure, mobile home or park trailer ~~is a type~~ constitutes one of the land development uses listed in section 2-346, regardless of whether community parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no community parks impact fee ~~shall be~~ is owed for the replacement use. In every case, the burden of proving past payment of community parks impact fees or equivalency of use rests with the feepayer.

Sec. 2-346. Computation of amount.

- (a) At the option of the feepayer, the amount of the community parks impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites ~~which are~~ permitted by the applicable final development order.

<i>Land Use Type Living Unit</i>	<i>Total Community Parks Impact Fee per Unit at 100% of Actual Full Cost (rounded to nearest dollar)</i>
Single-family residence	\$619.00 <u>\$655</u>
Multiple-family building, duplex, two-family attached or townhouse	\$408.00 <u>\$485</u>
Mobile home <u>not in mobile home park</u>	\$439.00 <u>\$655</u>
Timeshare	\$867.00 <u>\$485</u>
Hotel/motel room	\$417.00 <u>\$327</u>
Mobile home Pad Site/ <u>Recreational Vehicle Park Site</u>	\$417.00 <u>\$458</u>

Note: The fee schedule in effect prior to the adoption of this ordinance will be deleted from the LDC. As of September 15, 2001, this predecessor fee schedule will no longer be of any force or effect, except as to determining fees for building permits issued prior to September 15, 2001, or as otherwise indicated below.

Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or before September 14, 2001 will be

assessed community park impact fees based upon the fee schedule applicable on August 28, 2001, if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before two months after September 15, 2001.

Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or after September 15, 2001 will be subject to the amended impact fee schedule. All permits and development orders issued after November 15, 2001 will be assessed impact fees in accordance with the amended impact fee schedule regardless of when the application was submitted to the county.

Under this Article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit meets all of the following criteria:

- (1) the permit is approved by the County;
- (2) has been picked up by the owner or his agent; and,
- (3) all applicable fees have been paid.

[Also, NOTE: 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.]

- (b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the community parks impact fee ~~shall~~ will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, ~~should the change of use, redevelopment or modification result in a net decrease, no impact fee refunds or credits for past impact fees paid shall be made or created~~ will be granted if a net decrease results.
- (c) If the community parks impact fee has been calculated and paid based on error or misrepresentation, it ~~shall~~ will be recalculated and the difference refunded to the original feepayer or ~~paid~~ collected by the county, whichever is applicable. If community parks impact fees are owed, no participating municipality or county permits of any type may be issued for the building or structure in question, or for any other ~~part~~ portion of a development of which the building or structure in question is a part, ~~while the~~ until ~~impact fees remain unpaid, and the~~ are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.
- (d) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, ~~at his option,~~ opt to submit evidence to the county ~~administrator~~ manager indicating that the fees set out in subsection (a) of this section are not applicable to the particular development. Based upon convincing and competent evidence, which ~~shall~~ must be prepared and submitted in accordance with the county administrative code, the county ~~administrator~~ manager may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private

recreational facilities serve the same purposes and functions as set forth in the Lee Plan for community parks.

- (e) The impact fee schedule set forth in section 2-346(a) will be administratively reviewed and reanalyzed every three 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.

Sec. 2-347. Payment.

- (a) The feepayer ~~shall~~ must pay the community parks impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as provided in section 2-352. No building permit, mobile home move-on permit or recreational vehicle development order may be issued ~~for any development listed in section 2-346(a)~~ by the county or by any participating municipality until ~~such~~ the impact fee has been paid, except as provided in section 2-352.
- (b) In lieu of cash, up to ~~97~~ 100 percent of the community parks impact fee may be paid ~~by the use of~~ with credits ~~which are~~ created in accordance with the provisions of section 2-352(b).
- (c) Participating municipalities ~~shall~~ must remit community parks impact fee collections to the county at least once each month, less any amounts retained pursuant to section 2-350(d), unless another method is specified in an appropriate interlocal agreement.
- (d) All funds collected pursuant to this division ~~shall~~ will be properly identified by community parks impact fee district and promptly transferred for deposit into the community parks impact fee trust fund to be held in separate accounts as determined in section 2-349 and used solely for the purposes specified in this division.

Sec. 2-348. Benefit districts established.

There are hereby established eight community parks impact fee benefit districts as shown in Appendix L. Subdistricts may be created by interlocal agreement.

Sec. 2-349. Trust funds accounts.

- (a) There are hereby established eight community parks impact fee trust funds accounts, one for each community parks impact fee benefit district established in section 2-348. Subsidiary accounts may be established for subdistricts created by interlocal agreement.
- (b) Funds withdrawn from these accounts must be used in accordance with the provisions of section 2-350.

Sec. 2-350. Use of funds.

- (a) Funds collected from community parks impact fees ~~shall~~ must be used for the purpose of capital improvements for community parks. Except as provided in subsection (c) of this section, community parks impact fee collections, including any interest earned

thereon, less administrative costs retained pursuant to subsection (d) of this section, ~~shall must~~ be used exclusively for capital improvements for community parks within or for the benefit of the community parks impact fee benefit district in which the funds were collected. These impact fee funds ~~shall must~~ be segregated from other funds and ~~shall~~ be expended in the order in which they are collected. 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 for community parks. 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 ~~shall must~~ be divided and segregated ~~in such a fashion~~ that the amount of ~~such the~~ proceeds reserved for community park purposes bears the same ratio to the total funds collected that the community parks impact fee funds used or pledged bear to the total funds used or pledged.

- (b) Each fiscal period the county ~~administrator~~ manager ~~shall will~~ after consultation with participating municipalities and consistent with the provisions of any interlocal agreements made with them, present to the Board of County Commissioners a proposed capital improvement program for community parks, assigning funds, including any accrued interest, from the several community parks impact fee trust funds to specific community park projects. Monies, including any accrued interest, not assigned in any fiscal period ~~shall must~~ be retained in the same community parks impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this division.
- (c) Unless prohibited by an appropriate interlocal agreement, monies placed in one community parks impact fee trust fund may be borrowed and placed in another community parks impact fee trust fund so long as the Board of County Commissioners first determines in a public meeting that ~~such the~~ loans will not disrupt or otherwise alter the timing of provision of capital facilities to the lending district and will be repaid from specifically identified revenue sources within two years, either from the borrowing district or from some other source, with interest at a rate established by the board at the time it authorizes the loan; provided, however, that, if the interest is to be paid from community parks impact fees collected in the borrowing district, the board first finds that the amount of ~~such the~~ interest ~~so to be~~ paid will be equal to or less than the benefit given to fee payers in the borrowing district by virtue of the earlier provision of capital facilities in the borrowing district made possible by virtue of the loan. ~~So as to~~ To secure repayment of the loan on the terms established for it by the board, the motion authorizing the loan implicitly ~~shall must~~ include direction and authorization to the county's fiscal officers to perform all acts necessary to comply with the loan terms. Loans ~~shall may~~ not be renewed.
- (d) The county or the participating municipality collecting community parks impact fees ~~shall be is~~ entitled to ~~retain~~ charge and collect an amount equal to up to three percent of the community parks impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee, to offset the costs of administering this division. This administrative charge is in addition to the impact fee amount required by this division and is not required to be used for purposes of capital improvements. The applicant is responsible for payment of the administrative charge the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-351. Refund of fees paid.

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered, and is therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has ~~been~~ commenced, then the feepayer ~~shall be~~ is entitled to a refund of the community parks impact fee paid in cash as a condition for its issuance, except up to three percent of the impact fee paid, which ~~shall will~~ be retained as an administrative fee to offset the costs of processing the refund. This administrative fee is in addition to the administrative charge collected at the time of fee payment. ~~Subject to the limitations set forth in subsection (b) of this section, the feepayer shall be entitled to a refund equal to 97 percent of the community parks impact fee paid.~~ No interest ~~shall will~~ be paid to the feepayer on refunds due to noncommencement.
- (b) ~~No refund shall be allowed for any expired permit or development order which was obtained with the use of credits, except for that portion of the community parks impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (a) of this section shall be deducted from the portion of the fee which was not paid by credit.~~
- ~~(c)~~(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the community parks impact fee was paid ~~shall will~~, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

Sec. 2-352. Exemptions and credits.

- (a) The following are exempted from payment of the community parks impact fee:
- (1) Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
 - (2) The construction of accessory buildings or structures that will not produce additional living units.
 - (3) The replacement of a(n) existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985. However, if any such building, mobile home, park trailer or structure is destroyed, demolished or removed from the property voluntarily or involuntarily; then any replacement will be required to pay the appropriate impact fee, unless:
 - a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
 - b. construction commences within said 5-year period; and,
 - c. such construction continues in good faith without abandonment, expiration or loss of permits.

- (4) The replacement of a building, mobile home, park trailer or structure, ~~which~~ that was constructed or placed after September 16, 1985, where the correct community parks impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided that no additional living units will be produced than those produced by the original use of the land.
 - (5) An amendment to a recreational vehicle development order, provided that the amendment does not increase the number of recreational vehicle units permitted.
 - (6) A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
 - (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the community parks impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order ~~which~~ that, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
 - (8) A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an additional living unit.
 - (9) A building permit for residential construction in Harlem Heights, Charleston Park, or the Dunbar Enterprise Zone, as those areas are described in Appendix J.
 - (10) A building permit for construction included in the City of Sanibel's below market rate housing (BMRH) program established under the Sanibel land development code.
 - (11) Building permits issued in a redevelopment area or enterprise zone, or for low or moderate-income housing in the City of Fort Myers, but only when the permit is identified by the type of land use and by the land area or housing or redevelopment program in question by explicit language included in an appropriate interlocal agreement.
- (b) Credits ~~shall be~~ are subject to the following:
- (1) No credit ~~shall~~ will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with section 2-346(d).
 - (2) All other capital improvements for community parks may generate community parks impact fee credits in amounts to be established pursuant to subsection (b)(3) of this section, 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 in an

appropriate interlocal agreement, or unless the improvement is required under a participating municipality, state or county development or zoning approval, in which case credits ~~shall~~ must be given to the extent required by law.

(3) ~~When a person requests that a credit be created he shall present~~ A request submitted for community park construction must include cost estimates prepared by qualified professionals to be used by the county ~~administrator~~ manager in determining the amount of the credit ~~which the county administrator manager will recommend be authorized for approval~~ by the Board of County Commissioners.

(4) ~~When a person proposes credit for land dedication, he shall present the following:~~ A request submitted for a land dedication credit must include the following:

1. a survey of the land to be dedicated, certified by a professional land surveyor or a registered land surveyor, each of whom are licensed in the state;
2. a specimen of the deed ~~which he proposes to use~~ that will be used to convey title to the appropriate governmental body;
3. an ALTA Form B title insurance policy in an amount equal to the approved value of the credits to be issued, by a company satisfactory to the county attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
4. property appraisals prepared by qualified professionals; and
5. ~~a certified copy of the most recent assessment of the property for tax purposes, to be used by~~ a document from the tax collector stating the current status of the property taxes. These submittals will be reviewed by the county administrator manger in making his the decision to approve credits or to make a recommendation for the amount of the credit which the to the Board of County Commissioners may authorize.

In preparing their reports, appraisers ~~shall~~ will value, except where a dedication is made pursuant to a condition of zoning approval, value the land at its then-current zoning and without any enhanced value ~~which that~~ could otherwise be attributed to improvements on adjacent lands. If the land in question is subject to a valid agreement, zoning approval or development order ~~which prescribes~~ prescribing a different valuation, the agreement, zoning approval or development order ~~shall~~ will control. If the dedication is made pursuant to a condition of zoning approval and is not a site-related improvement, and the zoning condition does not prescribe otherwise, then the land value will ~~shall~~ be ~~valued~~ based upon the zoning of the land as it existed prior to the zoning approval ~~which contains~~ containing the condition of dedication. However, the county administrator

manager retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates or property appraisals for those improvements of land dedications. In every case, community parks impact fee credits ~~shall~~ must be calculated so as to be consistent with F.S. § 380.06(16).

- (5) Credits for construction ~~shall~~ will be created when the construction is completed and accepted by the appropriate governmental body for maintenance, or when the feepayer posts security, as provided in this subsection, for the costs of such construction. Credits for land dedication ~~shall~~ must be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the clerk of circuit court in the county. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement ~~shall~~ must be posted with the Board of County Commissioners, made payable to the county in an amount approved by the county ~~administrator~~ manager equal to 110 percent of the full cost of such construction. If the park construction project will not be constructed within one year of the acceptance of the offer by the county, the amount of the security ~~shall~~ will be increased by ten percent, compounded for each year of the life of the security. The security ~~shall~~ must be reviewed and approved by the county attorney's office prior to acceptance of the security by the county. If the park is to be owned by a participating municipality, the county may assign its rights in such security to the municipality if the municipality requests it and the law permits it.
- (6) Community parks impact fee credits created on or after October 1, 1989, ~~shall~~ must be in transferable form and may be sold, assigned or otherwise conveyed as set forth in the county administrative code. They may be used to pay or otherwise offset community parks impact fees required by this division, so long as the credits are used in the same community parks impact fee benefit district in which they are earned, consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, such transferable credits must be used within six years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements ~~which that~~ were given in exchange for credits were recorded in the county's official record book. If, during this period, community parks impact fees are increased before credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in section 2-346, ~~also shall~~ will be increased at the time they are used, in the same percentage that the fee ~~prescribed in section 2-346 on the date when the credit is used for the particular listed use in question has increased over the fee which was prescribed for the same use on the date when the transferable credit was created, rounded to the nearest dollar, as illustrated in the examples given in exhibit A of Ordinance No. 90-16, which is on file in the office of the county department of public resources~~ Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. Credits not used during this period ~~shall~~ will

expire. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.

- (7) Unless converted to transferable form pursuant to subsection (b)(7) of this section, community parks impact fee credits created prior to October 1, 1989, ~~shall~~ must be used, if requested by a feepayer, on a first applied for, full credit basis. This rule ~~shall apply~~ applies to any permit requested on any part of the original tract, which for purposes of this subsection (b)(6) and subsection (b)(7) of this section means the area of land developed, or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that such credits are available. This ~~shall~~ will be done regardless of whether the feepayer owned the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule ~~shall~~ will apply regardless of whether the owner of the original tract has assigned or failed to assign such credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering these pre-October 1, 1989, credits, the building official ~~shall be entitled to~~ may rely upon apparent authority; ~~but he may, in his sole discretion, or may~~ require such proof of ownership or agency as ~~he deems~~ deemed necessary, the burden of proving ownership or agency lying exclusively on the person claiming it.
- (8) Unless prohibited by the conditions of a development order issued pursuant to F.S. ch. 380, or some other participating municipality, state or county development approval, credits created prior to October 1, 1989, may be converted to transferable form by mutual agreement between the county and the owner or owners of all of the undeveloped area of land remaining from the original tract of land developed or permitted for development as part of the dedication of land or improvements for which the credits were created. Such agreements ~~shall~~ will include a provision whereby the person who acquires transferable credits will defend and indemnify the county from any and all claims made by other persons asserting an interest in these pre-October 1, 1989, credits.
- (9) Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question, and pay the full community parks impact fees required by this division.
- (10) If required or specifically permitted by the terms of a development order adopted pursuant to F.S. ch. 380, or by an agreement made by the county pursuant to its home rule powers granted by article VIII of the constitution of the state and F.S. § 125.01, or by a development agreement made pursuant to F.S. §§ 163.3220-163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay community parks impact fees in a particular

community parks impact fee benefit district may do so by delivering a certified check or cashier's check to the building official with a letter identifying the community parks impact fee benefit district or districts in question and the amount of community parks impact fees prepaid in the community parks impact fee benefit district or each of the community parks impact fee benefit districts, and receive a credit or credits equal to such prepayment subject to the express terms of such development order, agreement or development agreement.

- (c) Feepayers claiming credits ~~shall~~ must submit documentation sufficient to permit the building official to determine whether such credit's claimed are due and, if so, the amount of such credits.
- (d) Exemptions or credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions or credits not so claimed ~~shall~~ will be deemed waived by the feepayer.
- (e) Once used, credits ~~shall~~ will be canceled and ~~shall~~ may not be reestablished even if the permit for which they were used expires without construction.

Sec. 2-353. Appeals.

Any decision made by the county ~~administrator~~ manager or his designee, or by the building official, in the course of administering this division may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. So as to provide continuity in the interpretation and administration of this division, every interlocal agreement made pursuant to this division ~~shall~~ must specifically incorporate this appeal procedure, and each participating municipality ~~shall~~ must agree to be bound by the results of the administrative appeal. These interlocal agreements ~~shall~~ must provide further that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal ~~shall~~ will be defended by the county, at its expense, unless the municipality elects to provide the defense of the case itself.

Sec. 2-354. Enforcement of division; penalty; furnishing false information.

A violation of this division ~~shall be~~ is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the county, or any ~~community parks impact feepayer,~~ ~~shall have~~ has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the county ~~administrator~~ manager or his designee, the building official or any other ~~municipal~~ official who is charged with the administration of this division on any matter relating to the administration of this division ~~shall~~ constitutes a violation thereof.

Secs. 2-355 through 2-380. Reserved.

DIVISION 5. FIRE PROTECTION AND EMERGENCY MEDICAL
SERVICES IMPACT FEE

Sec. 2-387. Payment.

- (a) The feepayer must pay the fire and EMS impact fees required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fees are imposed, except as provided in sections 2-392 through 2-395. No building permit, mobile home move-on permit or recreational vehicle development order may be issued ~~for the development listed in section 2-386(a)~~ by the county or by any participating municipality until the fee has been paid, except as provided in sections 394 and 395.
- (b) In lieu of cash, up to ~~97~~ 100 percent of the fire and EMS impact fee may be paid ~~by the use of~~ with credits created in accordance with the provisions of section 2-395.

Sec. 2-390. Use of funds.

- (e) The county or participating municipality collecting fire or EMS impact fees is entitled to ~~retain charge and collect an amount equal to~~ up to three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this division. This administrative charge is in addition to the impact fee amount required by this division and is not required to be used for purposes of capital improvements. The applicant is responsible for payment of the administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-391. Refund of fees paid.

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked, voluntarily surrendered, or otherwise becomes void, and no construction or improvement of land (including moving a mobile home onto land) has been commenced, then the feepayer is entitled to a refund of the fire or EMS impact fees paid as a condition for its issuance, except that up to three percent of the impact fees paid will be retained as an administrative fee to offset the costs of processing the refund. Subject to the limitations set forth in subsection (b) of this section, the feepayer is entitled to a refund equal to 97 percent of the fire or EMS impact fees paid. This administrative fee is in addition to the administrative charge collected at the time of fee payment. No interest will be paid to the feepayer on refunds due to noncommencement.
- ~~(b) No refund is allowed for any expired permit that was obtained by the use of credits, except for that portion of the fire or EMS impact fee not paid by credit, in which case the three percent administrative fee described in subsection (a) of this section will be deducted from the portion of the fee not paid by credit.~~
- ~~(c)~~(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the fire or EMS impact fees were paid will, upon

application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

Sec. 2-394. Exemptions.

- (a) The following are exempted from payment of the fire and EMS impact fees:
- (3) The replacement of ~~a(n)~~ an existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before October 1, 1989. However, if any such building, mobile home, park trailer or structure is destroyed, demolished or removed from the property voluntarily or involuntarily; then any replacement will be required to pay the appropriate impact fee, unless:
- a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
 - b. construction commences within said 5-year period;
 - c. and, such construction continues in good faith without abandonment, expiration or loss of permits.
- (4) The replacement of a building, mobile home, park trailer or structure, ~~which that~~ was constructed or placed after October 1, 1989 and where the correct fire or EMS impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided no additional living units or fire protection or EMS demands will be produced than those produced by the original use of the land.
- (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the fire and EMS impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order ~~which that~~, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the project impact.

Sec. 2-395. Credits.

- (a) Credits are subject to the following:
- (2) *Conditions of credit approval.* Credit for fire protection or EMS equipment or facility construction or land dedication is subject to the following:
- b. *Land dedication.* ~~When a person requests credit~~ A request submitted for land dedication, he must present include the following:
 - 2. A specimen of the deed ~~he proposes to use~~ that will be used to convey title to the appropriate governmental body;

5. ~~A certified copy of the most recent assessment of the property for tax purposes, to be used by~~ A document from the tax collector stating the current status of the property taxes.

- (4) Transferability. Fire or EMS impact fees created on or after October 1, 1989 ~~are transferable. Transferable credits must be in transferable form and~~ may be sold, assigned or conveyed as set forth in the county administrative code. Credits may be used to pay or offset the fire or EMS impact fees in the same fire or EMS impact fee district in which they are earned, consistent with the interlocal agreements made with participating fire districts and municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within six years of the date created. The creation date is the date the instrument conveying legal title to the land or improvements given in exchange for credits were recorded in the county's official record books. If fire or EMS impact fees are increased before the credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in section 2-386, will be increased at the time they are used, in the same percentage that the Consumer Price Index--All Urban Consumers (CPU-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. ~~will be increased at the same time they are used in the same percentage that the fee prescribed in section 2-386 for the particular listed use, rounded to the nearest dollar. For example, see exhibit A of Ordinance No. 90-14, on file in the county clerk's office.~~ If fire or EMS impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within six years of issue ~~will be canceled by the building official~~ expire.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, nonrefund provisions and other restrictions prescribed in this division.

Sec. 2-396. Appeals.

Any decision made by the county ~~administrator~~ manager or his designee, or by the building official, in the course of administering this division may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. So as to provide continuity in the interpretation and administration of this division, every interlocal agreement made pursuant to this division must specifically incorporate this appeal procedure, and each participating municipality ~~will~~ must agree to be bound by the results of the administrative appeal. These interlocal agreements will provide further that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the county, at its expense, unless the municipality or district elects to provide the defense of the case.

Sec. 2-397. Enforcement of division; penalty; furnishing false information.

A violation of this division is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the county, or any fire or EMS impact feepayer, has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the county ~~administrator~~ manager or his designee, the building official or any municipal or fire district official who is charged with the administration of this division on any matter relating to the administration of this division ~~will~~ constitutes a violation thereof.

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 be considered 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 invalid or 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 Manager, or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

The ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

[end of provisions]

THE FOREGOING ORDINANCE was offered by Commissioner Ray Judah, who moved its adoption. The motion was seconded by Commissioner Robert P. Janes and, being put to a vote, the vote was as follows:

ROBERT P. JANES	Aye
DOUGLAS ST. CERNY	Absent
RAY JUDAH	Aye
ANDREW W. COY	Aye
JOHN E. ALBION	Aye

DULY PASSED AND ADOPTED THIS 28th day of August, 2001.

ATTEST:
CHARLIE GREEN, CLERK

By: Michele S. Zeissner
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: [Signature]
Chairman

APPROVED AS TO FORM:

By: [Signature]
Office of County Attorney