

## LEE COUNTY ORDINANCE 08-24

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTER 2 (ADMINISTRATION), ARTICLE VI (IMPACT FEES), DIVISION TWO (ROADS IMPACT FEE); AMENDING COMPUTATION OF AMOUNT (SECTION 2-266); PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Policy 2.3.2. of the Lee County Comprehensive Plan (Lee Plan) provides that the cost for the provision and expansion of services and facilities that benefit new development will be borne primarily by those who benefit, and that such funding may include impact fees; and,

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

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

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

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

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

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

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

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

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

WHEREAS, the study prepared by Duncan and Associates, Inc., entitled “Road Impact Fee Study - Lee County, Florida”, dated August 2008, forms the basis of the proposed amendments herein; and,

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

WHEREAS, based upon the Lee County Truck Impact Evaluation Study, a memo from Duncan and Associates, Inc., dated September 22, 2008, and the impact on the capacity of the road system, an impact fee is now proposed for the mine land use; and,

WHEREAS, the Florida Impact Fee Act set forth in Section 163.31801, Florida Statutes, requires local governments to provide for accounting and reporting of impact fee collections and expenditures. The Act further requires local governments that impose impact fees to address infrastructure needs to account for the revenues and expenditures of the impact fees in separate accounting funds; and,

WHEREAS, the Florida Impact Fee Act requires that local governments limit administrative charges for the collection of impact fees to actual costs; and,

WHEREAS, the Act requires that audits of financial statements of local governmental entities performed by a certified public accountant pursuant to Section 218.39, Florida Statutes, and submitted to the Auditor General include an affidavit signed

by the Chief Financial Officer of the County stating that the county has complied with the accounting and reporting requirements of the Act; and,

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed amendments to the Road Impact Fee Regulations on September 12, 2008; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Road Impact Fee Regulations on September 10, 2008; and,

WHEREAS, the Lee County Affordable Housing Committee reviewed the proposed amendments to the Road Impact Fee Regulations on September 22, 2008; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments to the Road Impact Fee Regulations on September 22, 2008; and found the amendments 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, ARTICLE VI, DIVISION TWO**

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

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

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

## ROADS IMPACT FEE SCHEDULE

<i>Land Use Type</i>	<i>Unit</i>	<i>Road Impact Fee Due at 100% of Actual Cost</i>
<b>Residential</b>		Local Roads
Single-family residence	Dwelling unit	\$8,976.00
Multiple-family building, duplex, townhouse, two-family attached	Dwelling unit	\$6,297.00
Mobile home/RV park	Pad/park site	\$4,686.00
Elderly/disabled housing	Dwelling unit	\$3,261.00
Adult Congregate Living facility (ACLF)	Dwelling unit	\$2,025.00
Hotel/motel or timeshare	Room/unit	<del>\$6,762.00</del> \$5,172.00
<b>Retail Commercial</b>		Local Roads
Shopping center	1,000 sq. ft.	<del>\$15,837.00</del> \$10,983.00
Bank	1,000 sq. ft.	\$25,134.00
Car wash, self-service	Stall	\$5,262.00
Convenience store w/gas sales	1,000 sq. ft.	\$40,305.00
Golf course (open to public)	Acre	\$2,697.00
Movie theater	1,000 sq. ft.	\$23,220.00
Restaurant, standard	1,000 sq. ft.	\$20,337.00
Restaurant, fast food	1,000 sq. ft.	\$44,337.00
<b>Office/Institutional</b>		
Office, general	1,000 sq. ft.	\$7,305.00

Office, medical	1,000 sq. ft.	\$24,126.00
Hospital	1,000 sq. ft.	\$11,736.00
Nursing home	1,000 sq. ft.	\$4,071.00
Church	1,000 sq. ft.	\$4,575.00
Day care center	1,000 sq. ft.	\$12,840.00
Elementary/secondary school (private)	1,000 sq. ft.	\$2,223.00
<b>Industrial</b>		
Industrial park or general industrial	1,000 sq. ft.	\$6,195.00
Warehouse	1,000 sq. ft.	\$4,416.00
Mini-warehouse	1,000 sq. ft.	\$1,587.00
<u>Mine</u>	<u>Cubic Yard</u>	<u>\$ .04</u>

Notes:

(1) *Unchanged*

(2) *Unchanged*

(3) Under this article, impact fees become due and payable at the time of building permit issuance. Mine impact fees become due and payable at the time the mine operation permit is issued. Mine impact fees will not be assessed upon the renewal of an existing mine operation permit, provided the mine footprint remains the same. If the mine footprint is increased beyond the previous mine operation permit approval, impact fees will be assessed upon the incremental increase in cubic yardage at the time the mine operation permit is issued. For purposes of this code, a building permit or mine operation permit is considered "issued" when the permit meets all of the following criteria:

- a. The permit is approved by the County;
- b. Has been picked up by the owner or his agent; and
- c. 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 golf courses and RV parks.]

(4) *Unchanged*

(b) *Unchanged.*

(c) The fee schedules set forth in section 2-266 was amended on ~~October 24, 2006~~ September 23, 2008. The fee schedule in effect prior to ~~October 24, 2006~~ September 23, 2008, will remain in effect until close of business ~~January 31, 2007~~ December 31, 2008 when the new fees take effect, as follows:

- ~~(1) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after January 31, 2007, or any building permit or mobile home move-on permit or development order issued after June 29, 2007, will be subject to the amended impact fee schedule.~~
- ~~(2) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted on or before January 31, 2007, will be assessed an impact fee based upon the fee schedule applicable on January 31, 2007, but only if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before June 29, 2007.~~
- ~~(3) After June 29, 2007, the director may accept payment according to the fee schedule in effect prior to January 31, 2007, only if the following conditions are met. The director's decision is not subject to appeal under section 34-145 of this code.
  - ~~a. The application for the permit or development order must have been properly submitted and sufficient for review on or before January 31, 2007; and,~~
  - ~~b. The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond June 29, 2007; and,~~
  - ~~c. The applicant submits a written request to the director specifying the reasons for the request; and,~~
  - ~~d. The director's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and,~~
  - ~~e. The ability and authority to accept such payments will terminate on August 31, 2007.~~~~

*Remainder of Section is not changed.*

**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 re-lettered 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 re-lettered 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**

This ordinance becomes effective upon filing with the Secretary of State.

Commissioner Hall made a motion to adopt the foregoing resolution, seconded by Commissioner Janes. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DONE AND ADOPTED this 23<sup>rd</sup> day of September, 2008.

ATTEST:  
CHARLIE GREEN, CLERK

BY: *Charlie Green*  
Deputy Clerk

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: *Ray Judah*  
Ray Judah, Chairman

DATE: 9/23/08

Approved as to form by:

*Robert Spickerman*  
Robert Spickerman  
County Attorney's Office







## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

**KURT S. BROWNING**  
Secretary of State

October 2, 2008

Honorable Charlie Green  
Clerk of Court  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 29, 2008 and certified copies of Lee County Ordinance Nos. 08-22 and 08-24, which were filed in this office on September 30, 2008.

Sincerely,

Liz Cloud  
Program Administrator

LC/srd

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DIRECTOR'S OFFICE

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