

ORDINANCE NO. 11-06

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 2; ARTICLE VI, IMPACT FEES, DIVISION 2, ROADS IMPACT FEES. THE AMENDMENTS PROPOSE TO REVISE THE ROAD IMPACT FEE SCHEDULE. IN ADDITION, REVISIONS ARE PROPOSED TO PROVISIONS GOVERNING THE REFUND OF FEES PAID, EXEMPTIONS, AND ROAD IMPACT FEE CREDITS.

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, 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 April 2011, 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 at the time the study was prepared and the use of sophisticated methodology to determine the impacts of development in an effort to establish an appropriate level of impact fees based on most recent localized data; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on May 13, 2011, and recommended their adoption; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on May 11, 2011, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 23, 2011, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LDC CHAPTER 2- ADMINISTRATION

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

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

Sec. 2-266. - Computation of amount.

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

ROADS IMPACT FEE SCHEDULE

Land Use Type	Unit	Roads Impact Fee Due at 100% of Actual Full Cost
Residential		Local Roads
Single-family residence	Dwelling unit	\$8,976 <u>\$6,701</u>
Multiple-family building, duplex, townhouse, two-family attached	Dwelling unit	\$6,297 <u>\$4,659</u>
Mobile home/RV park	Pad/park site	\$4,686 <u>\$3,499</u>
Elderly/disabled housing	Dwelling unit	\$3,261 <u>\$2,435</u>
Adult Congregate Living facility (ACLF)	Dwelling unit	\$2,025 <u>\$1,512</u>
Hotel/motel or timeshare	Room/unit	\$5,172 <u>\$3,861</u>
Retail Commercial		
Shopping center	1,000 sq. ft.	\$10,983 <u>\$7,933</u>
Bank	1,000 sq. ft.	\$25,134 <u>\$17,187</u>
Car wash, self-service	Stall	\$5,262 <u>\$3,800</u>
Convenience store w/gas sales	1,000 sq. ft.	\$40,305 <u>\$29,116</u>
Golf course (open to public)	Acre	\$2,697 <u>\$1,907</u>

Movie theater	1,000 sq. ft.	\$23,220 <u>\$16,769</u>
Restaurant, standard	1,000 sq. ft.	\$20,337 <u>\$14,688</u>
Restaurant, fast food	1,000 sq. ft.	\$44,337 <u>\$32,028</u>
Office/Institutional		
Office, general	1,000 sq. ft.	\$7,305 <u>\$5,355</u>
Office, medical	1,000 sq. ft.	\$24,126
Hospital	1,000 sq. ft.	\$11,736 <u>\$7,576</u>
Nursing home	1,000 sq. ft.	\$4,071 <u>\$3,481</u>
Church	1,000 sq. ft.	\$4,575 <u>\$3,851</u>
Day care center	1,000 sq. ft.	\$12,840 <u>\$10,705</u>
Elementary/secondary school (private)	1,000 sq. ft.	\$2,223 <u>\$1,897</u>
Industrial		
Industrial park or general industrial	1,000 sq. ft.	\$6,195 <u>\$4,626</u>
Warehouse	1,000 sq. ft.	\$4,416 <u>\$2,366</u>
<u>Warehouse, High-Cube</u>	<u>1,000 sq. ft.</u>	<u>\$956</u>
Mini-warehouse	1,000 sq. ft.	\$1,587 <u>\$1,125</u>
Mine	Cubic Yard	\$0.04 <u>\$.026</u>

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

Remaining provisions remain unchanged.

Sec. 2-271. Refund of fees paid.

Subsection (a) remains unchanged.

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten twenty (20) 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:

Subsections (1) through (2) remain unchanged.

- (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 five years after such destruction, demolition or removal; and,~~
- b. ~~construction commences within said five 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, that was constructed or placed after September 16, 1985, where the correct roads 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 vehicular trips will be produced than those produced by the original use of the land.~~

(4) Building permits that were issued for commercial buildings and residential dwelling units, which have been reinstated by the Building Official in accordance with Chapter 6, are exempt from the payment of impact fee increases that occurred after issuance of the original permit. However, no impact fee refund or credit will be granted if a net decrease results.

(5) through (11) remain unchanged.

(b) Exemptions must be claimed by the feepayer ~~at the time of the application for~~ before the issuance of a building permit, mobile home move-on permit or recreational vehicle development order. ~~Any exemption not so claimed is deemed waived by the feepayer.~~

Sec. 2-275. Credits.

(a)(1) through (a)(4) remain unchanged.

(5) *Transferability.* Roads impact fee credits created on or after October 1, 1989 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 twenty (20) 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, 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 (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. If roads impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within ~~ten~~ twenty (20) years of issue 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~~ of this division.

Subsection (6) remains unchanged.

~~(7) Conversion of credits. Credits created prior to October 1, 1989, may be converted to transferable form unless conversion is 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. The conversion must be accomplished by an agreement between the county and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the county from claims made by other persons asserting an interest in the pre-October 1, 1989, credits.~~

(87) Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this division.

(b) remains unchanged.

(c) 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 credits not so claimed will be deemed waived by the feepayer.

(d) Once used, credits must be canceled and may not be reestablished. even if the permit for which they were used expires without construction. Notwithstanding, if the permit for which credits were used expires, is revoked or voluntarily surrendered and therefore voided, and no construction or improvement of land has commenced, then the credits may be reestablished. The impact fee credit account will be re-established to its original value prior to any applicable adjustment under section 2-275 (a)(5). Reestablished credits must be issued to

the party that used the credits and maintain the original expiration date of the credits. Prior to reestablishment of credits, the feepayer must provide payment of the administrative fee required under § 2-271. Payment of the administrative fee may be made by reducing the reestablished impact fee credits by an amount equivalent to the administrative fee due.

(e) *remains unchanged.*

(f) *Reciprocity with municipalities.*

(1) Credits issued by participating municipalities will be recognized by Lee County if:

a. The credits are issued and used in compliance with section 2-275 for improvements that would qualify under section 2-270; and,

b. The issuing municipality has adopted a reciprocal regulation providing for similar recognition of Lee County road impact fee credits; or

c. The issuing municipality has previously entered into an agreement with the county allowing reciprocal transfer of impact fee credits between the county and municipality.

(2) Credits issued by a nonparticipating municipality will be recognized by Lee County if:

a. The credits are issued and used in compliance with section 2-275; and,

b. The County agrees by Resolution to allow the reciprocal transfer of impact fee credits for each request.

SECTION TWO: CONFLICTS OF LAW

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

SECTION THREE: SEVERABILITY

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

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the

intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. Amendments to § 2-271, will apply to all impact fees collected after the effective date of this Ordinance. Amendments to § 2-275 providing a twenty year expiration date for road impact fee credits will apply retroactively to all unexpired impact fees credits issued as of the effective date of this Ordinance.

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

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Absent
Frank Mann	Aye

DONE AND ADOPTED this 14th day of June 2011.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson
Deputy Clerk

BY: Frank Mann
Frank Mann, Chairman



Approved as to form by:

Callins
County Attorney's Office



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

DIVISION OF LIBRARY AND INFORMATION SERVICES

KURT S. BROWNING
Secretary of State

June 20, 2011

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

Attention: 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 June 16, 2011 and certified copies of Lee County Ordinance Nos. 11-05 and 11-06, which were filed in this office on June 17, 2011.

Sincerely,

Liz Cloud
Program Administrator

LC/vm

RECEIVED
MINUTES OFFICE
2011 JUN 23 PM 2:25

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
850.245.6600 • FAX: 850.245.6282 • TDD: 850.922.4085 • <http://dlis.dos.state.fl.us>

COMMUNITY DEVELOPMENT
850.245.6600 • FAX: 850.245.6643

STATE LIBRARY OF FLORIDA
850.245.6600 • FAX: 850.245.6744

STATE ARCHIVES OF FLORIDA
850.245.6700 • FAX: 850.488.4894

CAPITOL BRANCH
850.488.2812 • FAX: 850.488.9879

RECORDS MANAGEMENT SERVICES
850.245.6750 • FAX: 850.245.6795

ADMINISTRATIVE CODE AND WEEKLY
850.245.6270 • FAX: 850.245.6282