

**ORDINANCE NO. 12-07**

**AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 2; ARTICLE VI, IMPACT FEES, DIVISION 2, ROADS IMPACT FEES; DIVISION 3, REGIONAL PARKS IMPACT FEE; DIVISION 4, COMMUNITY PARKS IMPACT FEE; DIVISION 5, FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES IMPACT FEE; AND, DIVISION 6, SCHOOL IMPACT FEES. THE AMENDMENTS PROPOSE TO REVISE THE IMPACT FEE SCHEDULES, THE PROVISIONS GOVERNING THE REFUND OF FEES, THE INTEREST PAID ON IMPACT FEE REFUNDS, EXEMPTIONS, CREDITS, DURATION OF 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 (Board) adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board, 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, 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 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 65.1.5: requires Lee County to maintain a fire and EMS impact fee program that allows for voluntary participation of the individual fire districts; and,

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

WHEREAS, Lee Plan Policy 87.1.3: requires land development to bear a proportionate cost of the provision of new or expanded parks required by such development. Park impact fees are the most equitable means of capturing these costs. Lee County will therefore require impact fees for regional and community parks; and,

WHEREAS, Lee Plan Policy 87.1.4: requires the County to periodically review the parks impact fee ordinance and park impact fee districts to determine if changes are warranted. Such review will include an analysis of land/development costs, administrative costs/changes, and population/development pattern changes; and,

WHEREAS, Land Development Code, requires the Board of County Commissioners to review the Regional Parks, Community Parks, Fire and EMS and School impact fee schedules 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 Parks, School, Fire and EMS impact fee schedules; and,

WHEREAS, the studies prepared by Duncan and Associates, Inc., form the basis of the proposed amendments herein; and,

WHEREAS, the Duncan and Associates, Inc., studies and revised fee schedules rely upon the best available technical data and sophisticated methodology to establish an appropriate level of impact fees based on most recent localized data; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 27, 2012, 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 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. 2-275. 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 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 credits 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 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 provisions and restrictions of this division.

*Remaining sections 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 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~~ three percent per annum.

**ARTICLE VI. IMPACT FEES  
DIVISION 3. REGIONAL PARKS IMPACT FEE**

**Sec. 2-306. - Computation of amount.**

- (a) ~~The fee schedule set forth in this subsection is effective on June 1, 2005, except as otherwise stated herein.~~ 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 permitted by the applicable final development order.

Land Use Type	Regional Parks Impact Fee per Unit
Single-family residence	<del>\$691.00</del> <u>683.00</u>
Multiple-family building, duplex, two-family attached or townhouse	<del>518.00</del> <u>508.00</u>
Mobile home not in mobile home park	<del>691.00</del> <u>683.00</u>
Timeshare	<del>518.00</del> <u>508.00</u>
Hotel/motel room	318.00
Mobile home/RV park site	<del>504.00</del> <u>474.00</u>

*Sections (b) and (c) remain unchanged.*

- (d) ~~The fee schedule in effect prior to June 1, 2005 will remain in effect until 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 on or before July 1, 2005, will be assessed an impact fee based upon the fee schedule applicable on May 31, 2005, but only if the building permit or mobile home move on permit or recreational vehicle park development order is issued on or before October 1, 2005.~~

~~(2) A building permit or mobile home move on permit or recreational vehicle park development order application submitted after July 1, 2005, or any building permit or mobile home move on permit or development order issued after October 1, 2005, will be subject to the amended impact fee schedule.~~

~~(3) After October 1, 2005, the director may accept payment according to the fee schedule in effect prior to June 1, 2005 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 July 1, 2005; 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 October 1, 2005; 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 payments under this subsection will terminate on November 30, 2005.~~

~~(e)(d)~~ 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 will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.

~~(f)(e)~~ If the regional parks impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original feepayer or 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 portion of a development of which the building or structure in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

~~(g)~~(f) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may opt to submit evidence to the county 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 must be prepared and submitted in accordance with the county Administrative Code, the county 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.

~~(h)~~(g) 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.

### **Sec. 2-311. Refund of fees paid.**

*Subsection (a) remains unchanged.*

(b) Any Funds not expended or encumbered by the end of the calendar quarter immediately following ~~six~~ twenty (20) years from the date the regional parks 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~~ three percent per annum.

### **Sec. 2-312. Exemptions and Credits.**

(a) The following are exempt from payment of the regional parks impact fee:

*Subsections (1) through (2) remain unchanged.*

(3) The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, provided that no additional living units will be produced than those produced by the original use of the land. ~~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 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.~~

(4) Building permits issued for commercial buildings and residential dwelling units 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.

*Subsections (5) through (11) remain unchanged.*

(b) Credits are subject to the following:

*(b)(1) through (b)(5) remain unchanged.*

(6) Regional parks impact fee credits created on or after October 1, 1989, 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~~ twenty (20) 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 fee credits 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, 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. Credits not used during this period will expire after twenty (20) years.~~ 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 (7) remains unchanged.

~~(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 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)(8) 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)(9) 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 they will receive a credit or credits equal to such prepayment, subject to the express terms of such development order, agreement or development agreement.

Subsection (c) remains unchanged.

- (d) Exemptions or credits 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.
- (e) Once used, credits will be canceled and may not be reestablished ~~even if the permit for which they were used expires without construction.~~ Notwithstanding, credits may be reestablished 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. The impact fee credit account will be re-established to its value prior to adjustments applied pursuant to section 2-311(a). Reestablished credits must be issued to the party that used the credits. Those credits will maintain the original expiration date. Prior to reestablishment of credits, the feepayer must pay the administrative fee required under § 2-312(b)(6). Payment of the administrative fee may



be made by reducing the reestablished impact fee credits by an amount equivalent to the administrative fee due.

**ARTICLE VI. IMPACT FEES  
DIVISION 4. COMMUNITY PARKS IMPACT FEE**

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

- (a) ~~The fee schedule set forth in this subsection is effective on June 1, 2005, except as otherwise stated herein. 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 permitted by the applicable final development order.~~

Land Use Type	Community Parks Impact Fee per Unit
Single-family residence	<del>\$788.00</del> <u>780.00</u>
Multiple-family building, duplex, two-family attached or townhouse	<del>591.00</del> <u>581.00</u>
Mobile home not in mobile home park	<del>788.00</del> <u>780.00</u>
Timeshare	<del>591.00</del> <u>581.00</u>
Hotel/motel room	363.00
Mobile home/RV park site	<del>576.00</del> <u>541.00</u>

*Subsections (b) and (c) remain unchanged.*

- (d) ~~The fee schedule in effect prior to June 1, 2005 will remain in effect until 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 on or before July 1, 2005, will be assessed an impact fee based upon the fee schedule applicable on May 31, 2005, but only if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before October 1, 2005.~~

~~(2) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after July 1, 2005, or any building permit or mobile home move-on permit or development order issued after October 1, 2005, will be subject to the amended impact fee schedule.~~

~~(3) After October 1, 2005, the director may accept payment according to the fee schedule in effect prior to June 1, 2005 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 July 1, 2005; 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 October 1, 2005; 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 payments under this subsection will terminate on November 30, 2005.~~

~~(e)(d)~~ 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 will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.

~~(f)(e)~~ If the community parks impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original feepayer or 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 portion of a development of which the building or structure in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

~~(g)(f)~~ The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may opt to submit evidence to the county 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 must be prepared and submitted in accordance with the county Administrative Code, the county 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.

(h)(g) 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. 2-351. Refund of fees paid.**

*Subsection (a) remains unchanged.*

(b) Any Funds not expended or encumbered by the end of the calendar quarter immediately following ~~six~~ twenty (20) years from the date the regional parks 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~~ three percent per annum.

**Sec. 2-352. Exemptions and credits**

(a) The following are exempt from payment of the community parks impact fee:

*Subsections (1) through (2) remain unchanged.*

(3) ~~The replacement of a(n) existing lawfully permitted building, mobile home, park trailer or structure, provided that no additional living units will be produced than those produced by the original use of the land. 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 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.~~

(4) Building permits issued for commercial buildings and residential dwelling units 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.

*Subsections (5) through (11) remain unchanged.*

(b) Credits are subject to the following:

*(b)(1) through (b)(5) remain unchanged.*

- (6) Community parks impact fee credits created on or after October 1, 1989, 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~~ twenty (20) years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements that were given in exchange for credits were recorded in the county's official record book.

~~If, during this period, Community parks impact fee credits 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, 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. Credits not used during this period will expire within 20 years. 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.~~

(7) *remains unchanged.*

- ~~(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 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)~~(8) 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)~~(9) 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.

*Subsection (c) remains unchanged.*

(d) Exemptions or credits 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.

(e) Once used, credits will be canceled and may not be reestablished ~~even if the permit for which they were used expires without construction.~~ Notwithstanding, credits may be reestablished 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. The impact fee credit account will be re-established to its value prior to adjustments applied pursuant to section 2-352(b)(6). Reestablished credits must be issued to the party that used the credits. Those credits will maintain the original expiration date. Prior to reestablishment of credits, the feepayer must pay the administrative fee required under § 2-351(a). Payment of the administrative fee may be made by reducing the reestablished impact fee credits by an amount equivalent to the administrative fee due.

**ARTICLE VI. IMPACT FEES  
DIVISION 5. FIRE PROTECTION AND EMERGENCY  
MEDICAL SERVICES IMPACT FEE**

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

(a) At the option of the feepayer, the amount of the fire and EMS impact fees may be determined by the schedules shown in this subsection. The reference in the

schedules to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, non-common or other forms of net square footage. The reference in the schedules to recreational vehicles refers to the number of recreational vehicle sites permitted by the applicable final development order. If a building permit is requested for a building with mixed uses, as defined in section 2-384, then the fee will be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. If a permit application involves a type of development not specified on the schedule, then the county manager will use the fee applicable to the most nearly comparable type of land use on the schedule.

TABLE 1. FIRE IMPACT FEE SCHEDULE

FIRE DISTRICT	Use and Development Unit								
	Single-Family Residence or Mobile Home on Individual Lot Per Dwelling	Multi-Family Per Dwelling	Mobile Home or Recreational Vehicle in Mobile Home/RV Park Per Space	Hotel/Motel Per Room	Retail Per 1,000 sq. ft.	Office Per 1,000 sq. ft.	Public or Institutional Use Per 1,000 sq. ft.	General Industrial Per 1,000 sq. ft.	Public or Private Warehouse Per 1,000 sq. ft.
Alva <sup>2</sup>	\$760 474	\$595 356	\$554 327	\$625 289	\$593 559	\$277 261	\$593 171	\$286 133	\$269 62
Bayshore <sup>2</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Boca Grande	474	356	327	289	559	261	171	133	62
Bonita Springs <sup>6</sup>	660 437	517 328	481 301	542 266	515 515	240 240	515 158	248 123	234 57
Captiva Island <sup>3</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Estero <sup>2</sup>	540 357	423 268	540 247	444 218	424 421	197 197	421 129	203 100	191 47
Fort Myers <sup>4</sup>	490 321	384 241	357 221	403 196	382 379	178 177	382 116	184 90	173 42
Fort Myers Beach <sup>3</sup>	640 404	478 303	445 278	501 246	476 476	222 222	476 146	229 113	216 53
Fort Myers Shores <sup>3</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Iona-McGregor <sup>2</sup>	488 323	382 242	356 223	401 197	381 381	178 177	381 116	183 91	173 42
Lee County Airports <sup>5</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Lehigh Acres <sup>1</sup>	465 307	364 231	339 212	382 188	363 363	169 169	363 110	175 86	165 40
Matlacha-Pine Island <sup>3</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
North Fort Myers <sup>3</sup>	307 203	240 152	224 140	252 124	240 240	112 112	240 73	115 57	109 26
San Carlos Park <sup>2</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Sanibel <sup>3</sup>	678 449	531 337	495 309	557 273	529 529	247 247	529 162	255 126	240 59
South Trail <sup>2</sup>	440 271	321 203	299 188	337 165	320 320	149 149	320 97	154 76	145 35
Tice <sup>2</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62
Upper Captiva <sup>2</sup>	760 474	595 356	554 327	625 289	593 559	277 261	593 171	286 133	269 62

Notes:

- 1 Fire Control and Rescue Service District
- 2 Fire Protection and Rescue Service District
- 3 Fire Control District
- 4 Municipality of Fort Myers
- 5 Fire Department
- 6 Fire Control and Rescue District

TABLE 2. EMS IMPACT FEE SCHEDULE FOR LEE COUNTY EMS SERVICE AREA		
Land Use	Development Unit	EMS Impact Fee Per Unit
Single-family residence or mobile home on individual lot	Dwelling	<del>\$94.00</del> <u>50.00</u>
Multi-family [includes timeshare]	Dwelling	<del>71.00</del> <u>37.00</u>
Mobile home or recreational vehicle in mobile home/RV park	Space	<del>69.00</del> <u>34.00</u>
Hotel/motel	Room	<del>32.00</del> <u>30.00</u>
Retail	1,000 sq. ft.	<del>138.00</del> <u>58.00</u>
Office	1,000 sq. ft.	<del>66.00</del> <u>27.00</u>
Public or institutional use	1,000 sq. ft.	<del>138.00</del> <u>18.00</u>
General industrial	1,000 sq. ft.	<del>14.00</del> <u>14.00</u>
Public or private warehouse	1,000 sq. ft.	<del>7.00</del> <u>6.00</u>

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

**Sec. 2-391. Refund of fees paid.**

*Subsection (a) remains unchanged.*

(b) Any Funds not expended or encumbered by the end of the calendar quarter immediately following ~~six~~ twenty (20) years from the date the fire or EMS impact fees were 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~~ three percent per annum.

**Sec. 2-394. Exemptions.**

(a) The following are exempt from payment of the fire and EMS impact fees:

*Subsections (1) through (2) remain unchanged.*

(3) The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, provided no additional living units or fire protection or EMS demands will be produced than those produced by the original use of the land, 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 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 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..~~

(4) Building permits issued for commercial buildings and residential dwelling units 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. 2-395. Credits.**

*(a)(1) through (a)(3) remain unchanged.*

(4) Transferability. Fire or EMS impact fees 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 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 twenty (20) 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 fee credits 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 (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 fire or EMS impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within six 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, nonrefund provisions and other restrictions prescribed in of this division.

*Subsection (5) remains unchanged.*

~~(6) 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. Chapter 380, or some other participating municipality, state, or county government, 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.~~

~~(7)~~(6) 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 may pay the impact fees required by this division.

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

(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, credits may be reestablished 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. The impact fee credit account will be reestablished to its value prior to adjustments applied pursuant to section 2-395(a)(4). Reestablished credits must be issued to the party that used the credits. Those credits will maintain the original expiration date. Prior to reestablishment of credits, the feepayer must pay the administrative fee required under § 2-391. Payment of the administrative fee may be made by reducing the reestablished impact fee credits by an amount equivalent to the administrative fee due.

*Subsection (e) remains unchanged.*

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

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

- (a) At the option of the Feepayer, the amount of the school impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home refers to the number of mobile homes or mobile home park sites that are permitted by the applicable final development order or mobile home move on permit as appropriate.

Land Use Type	School Impact Fee per Unit
Single-family residence	<del>\$4,116.00</del> <u>3924.00</u>
Multiple-family building, duplex, two-family attached or townhouse	<del>1,624.00</del> <u>1223.00</u>
Mobile home	<del>936.00</del> <u>699.00</u>

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

**Sec. 2-410. Refund of fees paid.**

*Subsection (a) remains unchanged.*

- (b) Funds that have not been expended or encumbered by the end of the calendar quarter immediately following ~~ten~~ twenty (20) years from the date the school impact fee was paid, will be returned to the feepayer, with interest at the rate of ~~six~~ three percent per annum, upon application of the feepayer within 180 days of that date.

*Subsection (c) remains unchanged.*

**Sec. 2-412. Exemptions.**

- (a) The following are exempt from payment of the school impact fee:

*Subsections (1) through (4) remain unchanged.*

- (5) The replacement of an existing lawfully permitted building, mobile home or structure, ~~where the original permit was issued prior to December 1, 2001,~~ provided that no additional living units will be produced than those produced by the original use of the land. ~~However, if any such building, mobile home, 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.~~

*(6) through (8) remain unchanged.*

(9) Building permits issued for commercial buildings and residential dwelling units 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.

- (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 mobile home park development order. Any exemption not so claimed is deemed waived by the feepayer.

*Subsection (c) remains unchanged.*

### **Sec. 2-413. Credits.**

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

- (c) Transferability. School impact fee credits are transferable.
  - (1) Credits may be used to pay or offset school impact fees anywhere in the county or any municipality. However, the county manager and the county attorney must first determine that the improvement for which the credits were issued is a direct benefit to the development where the credits are sought to be used.
  - (2) Transferable credits must be used within ~~ten~~ twenty (20) years of the date created.
  - (3) ~~If School impact fees are increased before credits are used, the unused transferable credits 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 school impact fees are decreased, unused transferable credits will not decrease in value.~~ Credits not used within ~~ten~~ twenty (20) years will be canceled by the building official. 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.

*Subsections (d) and (e) remain unchanged.*

- (f) Once used, credits must be canceled and may not be reestablished, even if the permit for which they were used expires without construction. Notwithstanding, credits may be reestablished 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. The impact fee credit account will be re-established to its value prior to adjustments applied pursuant to section 2-413 (c)(3). Reestablished credits must be issued to the party that used the credits. Those credits will maintain the original expiration date. Prior to reestablishment of credits, the feepayer must pay the administrative fee required under section 2-410(a). Payment of the administrative fee may be made by reducing the reestablished impact fee credits by an amount equivalent to the administrative fee due.

## **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's intent that if any 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 further declares 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 sections 2-311(b), 2-351(b), 2-391(b), and 2-410(b) that extend the date for refunds of unused impact fees will apply to all impact fees collected after the effective date of this Ordinance. Amendments to sections 2-312(b)(6), 2-352(b)(6), 2-395(a)(4), and 2-413(c)(3) that provide a twenty year expiration date for Regional Parks, Community Parks, Fire and EMS, and School impact fee credits will apply retroactively to all unexpired impact fee credits issued as of the effective date of this Ordinance. In accordance with section 163.31801, F.S., any increase in impact fees adopted pursuant to this Ordinance will become effective 90 days after the date of adoption, decreases in impact fees will be effective immediately.

Commissioner Mann 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	Aye
Frank Mann	Aye

DONE AND ADOPTED this 10<sup>th</sup> day of April 2012.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson  
Deputy Clerk

BY: [Signature]  
John E. Manning, Chairman

Approved as to form by:

B. BIGELOW VICE CHAIR

[Signature]  
County Attorney's Office





## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 16, 2012

Honorable Charlie Green  
Clerk of the Circuit Courts  
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 April 13, 2012 and certified copy of Lee County Ordinance No. 12-07, which was filed in this office on April 16, 2012.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud  
Program Administrator

LC/srd

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