



[CODE OF ORDINANCES County of VOLUSIA, FLORIDA Codified through Ord. No. 2004-01, enacted Jan. 22, 2004. \(Supplement No. 37\)](#)

[Chapter 70 IMPACT FEES\\*](#)

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## Chapter 70 IMPACT FEES\*

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**\*Cross references:** Finance, § 2-241 et seq.; planning, ch. 90; special districts, ch. 110; determination and offsetting of impact on public services and facilities, app. A, § 105; concurrency management, app. A, § 1401 et seq.; zoning, app. B.

**Special acts reference**--Special districts, ch. 230.

**State law references:** Powers of chartered counties, Fla. Const. art. VIII, § 1(g); impact fees encouraged, F.S. § 163.3202(3).

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## ARTICLE I. IN GENERAL

Secs. 70-1--70-30. Reserved.

## ARTICLE II. FIRE/RESCUE SERVICE IMPACT FEE\*

\*Cross references: Fire prevention and protection, ch. 54; fire districts, § 54-141 et seq.

### Sec. 70-31. Definitions and rules of construction.

(a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply to the text of this article:

(1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(3) Words used in the present tense shall include the future; and words in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

(4) The phrase "used for" includes "arranged for," "designed for," "maintained for" or "occupied for."

(5) The word "person" includes an individual, a corporation, a partnership, a governmental entity or agency, an incorporated association or any other similar entity.

(6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of a like kind or character.

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster's New Collegiate Dictionary (G & C Merriam Co., 10th Edition 1993, or any subsequent edition) shall be used for the definition of any words not defined in this section.

*Applicant* means any person applying for or who has been granted a permit to proceed with a project.

*Building* means any structure with an impervious roof built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for 50 percent or more of its perimeter. The

term "building" shall be construed as if followed by the words "or part thereof."

*Building permit* means the permit required by section 104.1.1 of the Standard Building Code, Southern Building Code Congress, as adopted by the county.

*Capital improvement* includes architectural studies, preliminary engineering, engineering design studies, land surveys, property acquisition, engineering, permitting and construction of all the necessary features for any fire/rescue service project, including:

- \_\_\_\_\_ (1) Construction of fire stations and substations.
- \_\_\_\_\_ (2) Acquisition of all firefighting and protection equipment necessary for the prevention of fires and fighting fires.
- \_\_\_\_\_ (3) Acquisition, construction and equipping of training facilities to support fire/rescue service staff.
- \_\_\_\_\_ (4) Acquisition and equipping of rescue vehicles and other emergency equipment.

*Certificate of occupancy* means the official document or permit issued by a municipality or the county evidencing the completion of construction of a building in accordance with all applicable codes and its legal entitlement to permanent occupancy and use.

*Collecting agency* means the county or the growth management services center.

*County manager* means the county manager and/or designee.

*Dwelling* means one or more rooms in a building forming a separate and independent housekeeping establishment, arranged, designed or intended to be used or occupied by one family, and having no enclosed space or cooking or sanitary facilities in common with any other dwelling unit with no ingress or egress through any other dwelling unit, and containing permanent provisions for sleeping facilities, sanitary facilities and not more than one kitchen facility.

*Feepayer* means that person or entity who pays a fire/rescue service impact fee or his/her successor in interest with the right or entitlement to any refund of previously paid development impact fees which is required by this ordinance and which has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment or entitlement to any refund or previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

*Fire rescue service impact fee and fee* mean the fee required to be paid in accordance with this article.

*Land development activity* means the carrying out of any building activity or the making of any material change in the use or appearance of any building or land.

*Multiple-family dwelling* means a building containing three or more dwellings intended to be occupied primarily by permanent residents.

*Nonresidential property* means structures used for activities including but not limited to buying, selling, storing, trading or providing services. This classification will also include hotels, motels, hospitals, nursing homes, churches, schools, adult congregate living facilities, day care facilities and other activities that provide personal services. *Residential activity* means any building or portion thereof that is designated for or used for residential purposes and any activity involving the use or occupancy of a lot for residential purposes.

*Square foot.* For the purpose of the fee schedule, section 70-35(c), means total square footage of a building area, excluding overhangs.

*Zone* means those geographical areas as identified on exhibit A to this article.

(Ord. No. 89-22, §§ 102.00, 103.00, 5-4-89; Ord. No. 91-29, § II, 10-17-91; Ord. No. 93-6, 3-4-93; Ord. No. 95-35, § I, 9-7-95; Ord. No. 98-13, § I, 7-23-98; Ord. No. 01-16, § 1, 8-2-01)

**Cross references:** Definitions and rules of construction generally, § 1-2.

## **Sec. 70-32. Interpretation of article.**

- (a) *Interpretation.* The provisions of this article shall be liberally construed to effectively carry out its purposes in

the interest of public health, safety, welfare and convenience.

(b) *Methods of enforcement.* The county or municipality, as the case may be, shall withhold any certificate of occupancy or any final inspection approval for construction applicable to this article until the required fee has been paid.

(c) *Building permits not to be issued to persons failing to pay fee.* No building permit shall be issued by the county or municipality, as the case may be, to any person who, while required by this article to pay a fire/rescue service impact fee, and has failed to pay such fee.

(d) *Effect on conflicting regulations.* If any provision of this article is in conflict with a provision of any other county ordinance, resolution or regulation, then this article shall prevail to the extent of such conflict.

(Ord. No. 89-22, § 110.00, 5-4-89; Ord. No. 01-16, § 2, 8-2-01)

### **Sec. 70-33. Conflicting provisions.**

(a) *Effect on conflicting regulations.* If any provision of this article is in conflict with a provision of any other county ordinance, resolution or regulation, then this article shall prevail to the extent of such conflict.

(b) *Repeal of conflicting regulations.* All ordinances or parts of ordinances, and resolutions or parts of resolutions, in conflict with this article are hereby repealed, to the extent of such conflict.

(Ord. No. 89-22, § 111.00, 5-4-89)

### **Sec. 70-34. Authority; applicability; purpose and intent.**

(a) *Authority.* This article is adopted pursuant to article VIII, section 1(g), Florida Constitution, F.S. chs. 125 and 163, as amended, and the county Home Rule Charter (Laws of Fla. ch. 70-966, as amended).

(b) *Applicability.* Notwithstanding anything to the contrary in this Code, this article shall apply throughout the unincorporated area of the county and in municipalities that receive county fire/rescue services.

(c) *Purpose and intent.*

(1) The purpose of this article is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the reasonably anticipated costs of new fire/rescue service created by the new land development activity.

(2) This article is intended to implement and be consistent with the county comprehensive plan.

(Ord. No. 89-22, § 101.00, 5-4-89; Ord. No. 91-29, § I, 10-17-91; Ord. No. 95-35, § II, 9-7-95; Ord. No. 98-13, § II, 7-23-98; Ord. No. 01-16, § 3, 8-2-01)

### **Sec. 70-35. Imposition.**

(a) *Level of service; applicability of fee.*

(1) *Level of service for county fire/rescue service.* The level of service that is to be the standard for this article is the existing equipment and facilities of such service. Mobility of the equipment has permitted satisfactory service to rural and urban emergencies throughout the county with an average response time 6.01 minutes. New growth should contribute to the capital assets of the service in the same pro rata share as that heretofore paid by existing residents. Brush fire suppression is mutually beneficial to all citizens and is funded through fire district taxes and not this impact fee. Approximately 21.37 percent of all fire assets are required for controlling brush fires. This percent of assets has been removed from the sums used for calculating the fire impact fee. The county's fire/rescue system has expanded the number of fire stations and equipment to provide service to nonurban and urban areas. This article recognizes that the fire/rescue system has been classified in chapter 15 of the county comprehensive plan (capital improvement element) into urban, suburban and rural stations. This classification is based on type of equipment, number of calls and response time. At this time there is no substantial cost difference between the three types of stations. Changes will be recommended to ensure continued consistency between the comprehensive plan and this article. The cost data is calculated as the average for the countywide service.

The fire/rescue system operates or owns 21 fire stations equipped to provide protection for a designated service area. The rolling stock inventory consists of 116 vehicles of various types of fire engines, brush trucks, tankers and other support vehicles. These assets with a value of \$20,015,909.00 provide protection for 65,522 households and 13,211,924 square footage of nonresidential property. The number of fire stations and related equipment described in this article is anticipated to change due to population growth and changes in fire/rescue system technology. Increases due to growth will be supported by impact fees. The formula allocating services and costs is presented in subsection (c) of this section.

(2) *Activities subject to fee.* Any person who makes or causes the making of an improvement to land which requires the issuance of a building permit or any person who changes the use of any building to one which will generate additional fire/rescue demands shall be required to pay a fire/rescue impact fee in the manner and amount set forth in this article.

(3) *Payment of fee required prior to construction or change in use.* No person shall obtain a county or municipal certificate of occupancy for which the fee imposed by this article is applicable without first having obtained the required building permit and paid the proper impact fee imposed by this article. No person shall change the use or allow a change in use of any structure where the fee imposed by this article is applicable without having paid the proper fire/rescue impact fee imposed by this article. No person shall change the use or allow a change in use of any building where the fee imposed by this article is applicable without having paid the proper fire/rescue service impact fee imposed by this article.

(4) *Payment of fee required prior to application for electrical service.* No person shall apply for service from an electric utility without having paid the proper fire/rescue impact fee imposed by this article.

(b) *Payment of fee required prior to issuance of a certificate of occupancy, or occupancy of the building, occupational license or use permit.* No county or municipal certificate of occupancy, or occupancy of the building, occupational license or use permit for which a complete application is submitted after May 10, 1989, shall be issued unless and until the fire/rescue service impact fee required by this article has been paid. The obligation of a person to pay the fee imposed by this article shall not be extinguished by the inadvertent failure of the county to collect the fee at the time required.

(c) *Formula development.*

(1) *County fire/rescue service.* The following formula shall be used to determine fire/rescue service impact fees per land use types:

a. *Residential land use.*

## RESIDENTIAL

### FIRE/RESCUE SERVICE IMPACT FEE

TABLE INSET:

	Station Costs Per Square Footage	$= (A \times B)/C = D$
Volusia	Vehicle Cost/Year	$= [(E \times B)/C]/G = H$
County	Credits	$= @PV (H, I, J) = K$
Residential =	Fee Charge	$= (\text{Gross Fee} - \text{Credits}) = D - K = L$
	Administration Fee	$= 3\%$
	Total Residential Fee	$= L \times 1.03 = N$

TABLE INSET:

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Total Capital Outlay	Percent Service Demand	Total Dwelling Units	Station Costs per Dwelling Unit	Total Vehicle Costs	Vehicle Costs per Dwelling Unit	Gross No. Vehicle Years for Depreciation	Vehicle Costs per Year	Interest Rate for Depreciation	Net No. Vehicle Years for Depreciation	Present Value of Vehicle Costs	Residential Fee Charge	Administration Fee	Total Residential Fee
\$20,015,909.00	90.48	65,522	\$276.40	\$9,045,572.00	\$124.91	10	\$12.49	6.00%	4	\$43.28	\$233.12	3.00%	\$240.11

Where:

TABLE INSET:

Total Capital Outlay	=	The cost to purchase property, construct buildings and provide equipment for the present service level.
Percent Service Demand	=	The percent of residential fire calls.
Vehicle Costs	=	The total replacement cost of vehicles in the inventory.
Credits	=	Depreciation of the vehicles based on an expected useful operational life of the composite inventory of ten years. The formula provides credit for six years' depreciation with a present value of four years discounted at 6.0 percent interest.
Total Population	=	The number of full-time and seasonal residents in the unincorporated area of the county, as well as the Cities of Pierson, DeBary, Lake Helen, and Oak Hill.
Total Dwelling Units	=	Total population divided by 2.3 average persons per household.

b. *Nonresidential land use.*

## NONRESIDENTIAL

## FIRE/RESCUE SERVICE IMPACT FEE

TABLE INSET:

	Station Costs Per Square Foot	$= (A \times B)/C = D$
Volusia	Vehicle Cost/Year	$= [(E \times B)/C]/G = H$
County	Credits	$= @PV (H, I, J) = K$
Nonresidential =	Fee Charge	$= (\text{Gross Fee} - \text{Credits}) = D - K = L$
	Administration Fee	$= 3\%$
	Total Nonresidential Fee	$= L \times 1.03 = N$

TABLE INSET:

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Total Capital Outlay	Percent Service Demand	Total Nonresidential Square Footage	Station Costs per Square Footage	Total Vehicle Costs	Vehicle Costs per Square Footage	Gross No. Vehicle Years for Depreciation	Vehicle Costs per Year	Interest Rate for Depreciation	Net No. Vehicle Years for Depreciation	Present Value of Vehicle Costs	Nonresidential Fee Charge	Administration Fee	Total Nonresidential Fee per Square Footage
\$20,015,909.00	9.52	13,211,924	\$0.144	\$9,045,572.00	\$0.0652	10	\$0.00652	6.00%	4	\$0.023	\$0.122	3.00%	\$0.125

Where:

TABLE INSET:

Total Capital Outlay	=	The cost to purchase property, construct buildings and provide equipment for the present service.
Percent Service Demand	=	The percent of nonresidential fire calls.
Total Square Footage	=	The square footage of nonresidential buildings.
Vehicle Costs	=	The total replacement cost of vehicles in the inventory.
Credits	=	Depreciation of the vehicles based on an expected useful operational life of the composite inventory of ten years. The

		formula provides credit for six years' depreciation with a present value of four years discounted at 6.0 percent interest.
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TABLE INSET:

Credits	=	$\frac{\text{Vehicle Costs} \times \text{Percent of Service Demand}}{\text{Total Square Footage}}$	$\frac{10 \text{ Years Depreciation} \times \text{Present Value at 6.0\% for 4 Years}}{\text{Total Square Footage}}$
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(d) *Fee schedule.*

\_\_\_\_\_ (1) *Areas served county fire/rescue service.* The fee schedule for areas served by county fire/rescue service is as follows:

TABLE INSET:

Land Use	Unit	Fee
Residential	Single dwelling	\$240.11
Nonresidential (including hotel/motel)	Square foot	0.125

(e) *Credits for donations; fee for mixed uses; fee for change of existing use.*

\_\_\_\_\_ (1) The donation of land, facilities and equipment may qualify for credits if consistent with the county's plans and standards for station location, size and apparatus specifications, and upon approval by the fire services administrator. The value of improvements or donations shall be determined by the county fire services administrator and approved by the growth management and environmental service center director.

\_\_\_\_\_ (2) If a building permit is requested for a building with residential and nonresidential uses, then the fee shall be determined through using the schedule set out in this section by apportioning the space committed to uses specified on the schedule.

\_\_\_\_\_ (3) In the case of a change of use, redevelopment or modification of an existing use requiring the issuance of a building permit, the impact fee shall be based upon the net increase in the impact fee for the new as compared to the previous use.

(Ord. No. 89-22, § 104.00, 5-4-89; Ord. No. 91-29, §§ III--V, 10-17-91; Ord. No. 93-6, 3-4-93; Ord. No. 95-35, § III, 9-7-95; Ord. No. 98-13, § III, 7-23-98; Ord. No. 01-16, § 4, 8-2-01)

**Sec. 70-36. Payment.**

(a) *Time of payment; lien.* The person applying for the issuance of a county or municipal building permit shall pay the fire/rescue service impact fee prior to the issuance of a certificate of occupancy, or the occupancy of the building. The county shall issue an impact fee statement to the applicant for a building permit. Such impact fee statement shall set forth the amount of impact fee due.

The obligation for payment of the impact fee shall run with the land. However, this section shall not be construed to relieve an applicant of responsibility or liability for payment of the impact fees imposed by this article.

In the event the impact fee is not paid prior to the issuance of a certificate of occupancy or the occupancy of the building, the county may collect the impact fee, together with interest from the date payment was due at the rate fixed by law for judgments, an administrative penalty of five percent per month (to a maximum of 25 percent of all fees unpaid at the time they were due according to the terms of this article), the costs of such collection and a reasonable attorney's fee. Interest and penalties shall be remitted for addition to the trust fund, and the recovered costs and fees for collection shall be retained by or remitted to the government incurring the expense of collection. The county attorney, or duly authorized representative, may execute, serve upon the owner by certified mail and record a notice of nonpayment in the official records of the county, which shall contain the legal description of the property and the amount of the impact fee liability. Said notice shall thereupon operate as a lien against such property for the amount of the impact fee, together with interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

In the event the impact fee rate for a particular land use is changed subsequent to the issuance of a building permit and before the issuance of a certificate of occupancy, the impact fee shall be the amount in effect on the date payment is received. If no building permit is required upon a change of use of a building, the fee imposed by this article shall be payable at such time as the person making such change shall be required to apply for a county or municipal occupational license or use permit.

All fees due under this article shall become a lien at the time of the issuance of the building permit or in the case of a change of use on the issuance of an occupational license, as the case may be, such fees shall be due, and shall remain a lien, coequal with the lien of all state, district, county and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Such lien shall be upon the land on which an improvement is made requiring the payment of fees and shall be for the amount of the fee required, as well as for all penalties and interest due under the provisions of this article.

(b) *Method of payment.* Payment of fire/rescue service impact fees shall be made to the County of Volusia.

(c) *Disposition of funds.* All funds collected shall be properly identified by fire/rescue service impact fee zone and promptly transferred for deposit into the appropriate fire/rescue service impact fee trust fund to be held in separate accounts as determined in section 70-37 and used solely for the purposes specified in this article.

(Ord. No. 89-22, § 105.00, 5-4-89; Ord. No. 95-35, § IV, 9-7-95; Ord. No. 98-13, § IV, 7-23-98; Ord. No. 01-16, § 5, 8-2-01)

## **Sec. 70-37. Trust funds; use of funds.**

(a) *Trust funds.* There is hereby established a fire/rescue service impact fee trust fund and is incorporated in this article by reference. Subsequent to the adoption of the ordinance from which this article is derived, should any parcel or area of land located within the unincorporated area of Volusia County be annexed into a municipality which, at the initial effective date of the ordinance from which this article is derived, was located within an adjacent unincorporated area of Volusia County, the boundaries of the municipality shall be deemed amended as of the date of annexation so as to include the land annexed within the municipality. Such amendment shall be for the purposes of this article only and shall not affect any prior payment of fees or expenditure of funds attributable to the annexed property.

(b) *Use of funds; administrative fee.*

(1) The fire services administrator shall, each fiscal year, prepare a preliminary capital improvement program for facilities to be funded from the fire/rescue service impact fee trust fund. The county manager shall present to the County council the proposed capital improvement program in the capital improvement \_\_\_\_\_ element of the comprehensive plan for fire/rescue facilities, assigning funds, including any accrued interest, from the fire/rescue service impact fee trust fund to specific improvements and related expenses. Moneys, including any accrued interest, not assigned in any fiscal period shall be retained in the fire/rescue service impact fee trust funds until the next fiscal period except as provided by the refund provisions of this article.

(2) Funds shall be used exclusively for capital improvements, or expansion, or equipment within the \_\_\_\_\_ unincorporated area of Volusia County or appropriate municipalities from which funds were collected. Funds shall be deemed expended in the order in which they are collected.

(3) The county shall be entitled to collect and retain a three percent administrative fee, which is in \_\_\_\_\_ addition to the fee otherwise owed. This fee is collected to offset the costs of administering this article.

(Ord. No. 89-22, § 106.00, 5-4-89; Ord. No. 91-29, § XVI, 10-17-91; Ord. No. 93-6, 3-4-93; Ord. No. 98-13, § V, 7-23-98; Ord. No. 01-16, § 6, 8-2-01)

## **Sec. 70-38. Refunds.**

(a) If a building permit expires and no construction has been commenced, then the feepayer shall be entitled to a refund of the impact fee paid as a condition for its issuance, except that the county shall retain a portion of the funds to offset the costs of refund, based on the following schedule:

TABLE INSET:

Fee Paid (Excluding	Retained Percent
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Administrative Fee)	
\$5,000.00 or less	3%
\$5,000.01 plus	3% of the first \$5,000.00 and 1% of the remainder above \$5,000.00

The schedule in this subsection shall apply to all requests for refunds originally submitted on or after the effective date of the ordinance from which this article is derived, regardless of the date of permit issuance or original fee paid.

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following five years from the date the fire/rescue service impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to such owner with interest at the rate of six percent per annum.

(Ord. No. 89-22, § 107.00, 5-4-89; Ord. No. 93-6, 3-4-93; Ord. No. 95-35, § V, 9-7-95; Ord. No. 01-16, § 7, 8-2-01)

### **Sec. 70-39. Exemptions.**

The following activities shall be exempted from payment of the fire/rescue service impact fee:

- \_\_\_\_\_ (1) Alterations or expansions of an existing building where no additional square feet or units are created over that of the existing use.
- \_\_\_\_\_ (2) The replacement of a building or structure with a new building or structure of equal size and use.

(Ord. No. 89-22, § 108.00, 5-4-89; Ord. No. 01-16, § 8, 8-2-01)

### **Sec. 70-40. Adjustments to fee structure.**

(a) *Annual adjustment.* The fire/rescue impact fee formula and schedules set out in section 70-35(c) shall be adjusted annually. The total cost of rolling stock and fixed assets will be adjusted based on annual percentage changes in the Consumer Price Index (CPI). Annual changes shall be effective on May 1 of each year, based upon the index change for the 12 months ending on December 31 of the previous year.

(b) *Fee review.* The fire/rescue service impact fee shall be reviewed by the County council no less than once every six years. The review shall consider the adequacy of the service to meet the needs of new demands created by new developments. The purpose of this review is to analyze the effects of inflation on the actual acquisition and operation of the fire/rescue service. This review will consider any changes which have occurred in county revenue sources and their effect upon funding of the fire/rescue service.

(Ord. No. 89-22, § 109.00, 5-4-89; Ord. No. 93-6, 3-4-93; Ord. No. 00-23, § 1, 7-6-00)

### **Sec. 70-41. Administrative review; procedures; final administrative review; hearings.**

Administrative review; procedures; final administrative review; hearings of this article are provided in article III, sections 70-81 and 70-82.

(Ord. No. 89-22, § 112.00, 5-4-89; Ord. No. 93-6, 3-4-93; Ord. No. 01-16, § 9, 8-2-01)

#### **EXHIBIT A. FIRE/RESCUE SERVICE IMPACT FEE ZONES**

##### *Zone No. 1:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, to the southeast corner of said Section 36; thence east, along the township line, to the northwest

corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 and also known as Pioneer Trail); thence easterly, along the centerline of CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north along said east line of the west half of Section 9 and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to said east line of the west half of said Section 4; thence north, along said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly following the city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along said thread of the Halifax River to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly along said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the Atlantic Ocean; thence northerly, along said shoreline of the Atlantic Ocean, to its intersection with the boundary line between Volusia County and Flagler County; thence westerly, south and west, following said boundary line between Volusia County and Flagler County, to the point of beginning; excluding therefrom all areas within the corporate boundaries of any municipality.

*Zone No. 2:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31, Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 6, Township 17 South, Range 32 East; thence east, along the township line, to the northwest corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 and also known as Pioneer Trail); thence easterly, along the centerline [of] CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north along said east line of the west half of Section 9 and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to said east line of the west half of said Section 4; thence north, along said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly, following the city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along said thread of the Halifax River, to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly along said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the Atlantic Ocean; thence southerly, along said shoreline of the Atlantic Ocean, to its intersection with the township line between Township 19 South and Township 20 South; thence west, along the last-described township line to the point of beginning; excluding therefrom all areas within the corporate boundaries of the Cities of New Smyrna Beach and Edgewater.

*Zone No. 3:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31, Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 7, Township 17 South, Range 32 East; thence west, along the south line of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the southwest corner of said Section 6; thence south along the range line to the southeast corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East and continuing west along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence west to the southwest corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west along

the south lines of Sections 20 and 19, Township 17 South, Range 30 East and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford; thence southerly, along said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence southerly, along said thread of the St. Johns River, to its intersection with the south line of Section 35, Township 21 South, Range 33 East; thence East, along the south lines of Sections 35 and 36, Township 21 South, Range 33 East, to the southeast corner of said Section 36; thence north, along the range line to the point of beginning; excluding therefrom all areas within the corporate boundaries of Orange City and Deltona.

*Zone No. 4:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, along the range line, to the southeast corner of Section 1, Township 17 South, Range 31 East; thence west, along the south lines of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the southwest corner of said Section 6; thence south along the range line to the southeast corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East, and continuing west along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence west to the southwest corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west, along the south lines of Sections 20 and 19, Township 17 South, Range 30 East and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford; thence southerly, along said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence northerly, along said thread of the St. Johns River, to its intersection with the southerly shoreline of Lake George; thence westerly and northerly, along said shoreline of Lake George (west boundary of the county) to its intersection with the boundary line between Volusia County and Putnam County; thence easterly, along the last-described boundary line, to its intersection with the boundary line between Volusia County and Flagler County; thence easterly, south and east, following said boundary line between Volusia County and Flagler County, to the point of beginning; excluding therefrom all areas within the corporate boundaries of the City of DeLand.

(Ord. No. 98-13, § VI, 7-23-98; Ord. No. 00-04, § I, 2-10-00)

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EXHIBIT B. RESERVED\*

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**\*Editor's note:** Section VII of Ord. No. 98-13, adopted July 23, 1998, repealed Exh. B in its entirety. Formerly, Exh. B pertained to the fire/rescue service impact fee zone and derived from the 1994 Code.

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Secs. 70-42--70-70. Reserved.

## ARTICLE III. THOROUGHFARE ROAD IMPACT FEE\*

\*Cross references: Roads and bridges, ch. 94; transportation districts, § 110-481 et seq.

Special acts reference--Roads and bridges, ch. 222.

### Sec. 70-71. Definitions and rules of construction.

(a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply to the text of this article:

- \_\_\_\_\_ (1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table or illustrative table, the text shall control.
- \_\_\_\_\_ (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- \_\_\_\_\_ (3) Words used in the present tense shall include the future; and words in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- \_\_\_\_\_ (4) The phrase "used for" includes "arranged for," "designed for," "maintained for" or "occupied for."
- \_\_\_\_\_ (5) The word "person" includes an individual, a corporation, a partnership, a governmental entity or agency, an incorporated association or any other similar entity.
- \_\_\_\_\_ (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of a like kind or character.
- \_\_\_\_\_ (7) Any road right-of-way used to define thoroughfare road impact fee zone boundaries may be considered to be within any zone it bounds for purposes of using these funds.
- \_\_\_\_\_ (8) The land use types listed in section 70-75(c)(3) shall have the same meaning as under the zoning ordinance of the county, Ordinance No. 80-8, as amended (appendix B to this Code).

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster's New Collegiate Dictionary (G & C Merriam Co., 10th ed. 1993, or any subsequent edition) shall be used for the definition of any words not defined in this section.

*Accessory use* means any use or attached or detached structure clearly incidental, subordinate and related to the principal use or structure and located on the same lot with such principal use or structure.

*Apartment* means a rental dwelling unit that is located within the same building with at least two other dwelling units. Sites included in this land use are triplexes and all types of apartment buildings. The apartments in this land use include both low-rise or "walk-up" dwellings and high-rise.

*Applicant* means any person applying for or who has been granted a permit to proceed with a project.

*Average trip length* means the average length in miles of external trips.

*Building* means any structure with an impervious roof built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof."

*Building area* means the area included within surrounding exterior walls, or exterior walls and fire walls.

*Building permit* means the permit required by section 104.1.1 of the Florida Building Code, as adopted by the county.

*Capacity* means the maximum number of vehicles for a given time period which a road can safely and efficiently carry; usually expressed in terms of vehicles per day.

*Capital improvement* includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project including, but not limited to:

- \_\_\_\_\_ (1) Construction of new through lanes.
- \_\_\_\_\_ (2) Construction of new turn lanes.
- \_\_\_\_\_ (3) Construction of new bridges.
- \_\_\_\_\_ (4) Construction of new drainage facilities in conjunction with new roadway construction.
- \_\_\_\_\_ (5) Purchase and installation of traffic signalization (including new signalization and upgrading signalization).
- \_\_\_\_\_ (6) Construction of curbs, medians, shoulders, sidewalks and bikepaths.
- \_\_\_\_\_ (7) Relocating utilities to accommodate new roadway construction.

*Certificate of occupancy* means the official document or permit issued by a municipality or the county evidencing the completion of construction of a building in accordance with all applicable codes and its legal entitlement to permanent occupancy and use.

*Collecting agency* means the local governmental authority having jurisdiction to authorize the making of any material change of any structure, including the construction, enlargement, alteration or repair of buildings, or the local governmental authority having jurisdiction to authorize rezoning or special exceptions that make material changes in the use or appearance of land without making material changes of any structures on the land.

*County manager* means the county manager and/or his/her designee.

*Dwelling* means one or more rooms in a building forming a separate and independent housekeeping establishment, arranged, designed or intended to be used or occupied by one family, and having no enclosed space or cooking or sanitary facilities in common with any other dwelling unit with no ingress or egress through any other dwelling unit, and containing permanent provisions for sleeping facilities, sanitary facilities and not more than one kitchen facility.

*Dwelling, manufactured:* A dwelling fabricated in a manufacturing facility and bearing a seal certifying it is constructed to standards as adopted under the authority of F.S. § 553.35 et seq. and rules adopted by the Florida Department of Community Affairs under chapter 9B-1 et seq., Florida Administrative Code.

*Dwelling, mobile home:* A single-family dwelling fabricated in a manufacturing facility, having a width of more than 8 1/2 feet and a length of more than 40 feet, and bearing a seal certifying it is constructed either to the Federal Manufactured Housing Construction and Safety Standards Code or to obsolete ANSI 119.1 Mobile Home Design and Construction Standards.

*Dwelling, single-family:* A building containing only one dwelling. This term includes a manufactured or mobile home dwelling.

*Expansion.* Expansion of the capacity of a road applies to all road and intersection capacity enhancements and includes extensions, widening, intersection improvements, upgrading signalization and improving pavement conditions.

*Feepayer* means that person or entity who pays a thoroughfare road impact fee or his/her successor in interest with the right or entitlement to any refund of previously paid development impact fees which is required by this ordinance and which has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment or entitlement to any refund or previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

*Flex office/warehouse* means flex-type or incubator tenant space that lends itself to a variety of uses. The single story building is designed for multiple tenants, divided in spaces running front to rear. Office space is located only at the front of the building with warehouse space accessed by roll-up delivery doors. The proportion of office vs. warehouse space in each tenant space is not determined until the user occupies the space. The space may subsequently be reportioned to accommodate the current occupant or a new occupant's changing needs. The space may include such uses as offices; retail and wholesale stores; warehousing, manufacturing, light industrial, or scientific research functions. The maximum nonwarehouse use is limited to 35 percent of the total building

space.

*Frontage road and marginal-access road* mean a minor street which parallels and is adjacent to an arterial, thoroughfare or state road, and which provides access to abutting properties and protection from through traffic.

*Hotel* means a place of lodging that provides sleeping accommodations, restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, and other retail and service shops. Some of the sites included in this land use category are actually large motels providing the facilities of a hotel.

*Land development activity generating traffic* means the carrying out of any building activity or the making of any material change in the use or appearance of any structure or land that attracts or produces vehicular trips over and above that produced by the existing use of the land.

*Lot*: An area of land which abuts a street and which either complies with or is exempt from the Volusia County Subdivision Regulations [see appendix A, article II] and is sufficient in size to meet the minimum area and width requirements for its classification.

*Major sports facility* means a stadium or racetrack for major sports events with a permanent seating capacity of at least 5,000 spectators. Further, a major sports facility is characterized by infrequent use such that there are no more than 30 days of use per year where the facility is at, or above, ten percent occupancy. Actual fee for this land use category, provided it meets the definition, is based on the rate  $\times$  frequency of use (greater than 10 percent occupancy) on an annual basis.

*Mixed use building* means a single- or multiple-user building that cannot be classified as a shopping center and does not meet the definition of flex-office/warehouse building, but contains two or more uses listed on the road impact fee schedule as set forth in subsection 70-75(c)(3)a. The fee will be determined according to the fee schedule by apportioning the total space within the building according to the space devoted to each principle use. However, any accessory use which takes up less than 20 percent of the square footage of the principle use will be considered an incidental use, not a mixed use, when such use is necessary to carry out the principle use, i.e. warehouse area needed for a retail business.

*Mobile home park*: An area of land under one ownership where designated spaces for mobile home dwellings are rented. The overall operation is managed on a full- or part-time basis and provides various services and facilities for common use.

*Motel* means a place of lodging that provides sleeping accommodations and often a restaurant. Motels generally offer free on-site parking and provide little or no meeting space.

*Multiple-family dwelling* means a building containing three or more dwellings intended to be occupied primarily by permanent residents.

*Off-site improvements* means road improvements, other than those referenced in the definition of site-related improvements, located outside of the boundaries of the parcel proposed for development, which are required to serve the development's external trips.

*Percent of new trips* means the number of new trips generated by the land development activity.

*Site-related improvements* means capital improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements includes, but not limited to, the following:

- \_\_\_\_\_ (1) Site driveways and roads;
- \_\_\_\_\_ (2) Right- and left-turn lanes leading to those driveways and roads;
- \_\_\_\_\_ (3) Traffic control measures for those driveways and roads;
- \_\_\_\_\_ (4) Acceleration/deceleration lanes;
- \_\_\_\_\_ (5) Frontage roads;
- \_\_\_\_\_ (6) Median openings/closings; and
- \_\_\_\_\_ (7) Roads necessary to provide direct access to the development.

*Square foot*, for the purpose of the fee schedule, section 70-75(c)(3), means total square footage of a building

area, excluding overhangs.

*Thoroughfare road impact fee* and *fee* mean the fee required to be paid in accordance with this article.

*Thoroughfare system* means all state roadways and any roadway that has been designated by the Volusia County Council as either a county arterial or collector or a municipality's arterial or collector that is shown on the Future Traffic Circulation Map contained in the Transportation Element of the Comprehensive Plan.

*Thoroughfare system plan* means the thoroughfare plan as set out and included in the comprehensive plan.

*Traffic generation statement* means a documentation of proposed trip generation rates submitted prior to and as a part of a traffic impact analysis. This documentation shall include actual traffic generation information from a representative sampling of existing similar developments.

*Trip* means a one-way movement of vehicular travel from an origin (one trip end) to a destination (the other trip end).

*Trip generation* means the attraction or production of trips caused by a given type of land development.

*Zone* means those geographical areas as identified on the attached exhibit A following this article.

(Ord. No. 86-6, §§ 102, 103, 6-19-86; Ord. No. 90-2, § I, 6-21-90; Ord. No. 95-35, § VI, 9-7-95; Ord. No. 99-28, § II, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

**Cross references:** Definitions and rules of construction generally, § 1-2.

## **Sec. 70-72. Interpretation of article; enforcement; penalty.**

(a) *Interpretation.* The provisions of this article shall be liberally construed to effectively carry out its purposes in the interest of public health, safety, welfare and convenience.

(b) *Methods of enforcement.* The county or municipality, as the case may be, shall withhold any certificate of occupancy or any final inspection approval for construction applicable to this article until the required fee has been paid.

(c) *Penalty.* A violation of this article shall be punishable according to section 1-7 of the Code of Ordinances of the County of Volusia.

(d) *Building permits not to be issued to persons failing to pay fee.* No building permit shall be issued by the county or municipality, as the case may be, to any person who, while required by this article to pay a thoroughfare road impact fee, and has failed to pay such fee.

(Ord. No. 86-6, § 110, 6-19-86; Ord. No. 86-11, § I, 8-21-86; Ord. No. 88-9, § I, 5-5-88; Ord. No. 99-28, § III, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-73. Conflicting provisions.**

(a) *Effect on conflicting regulations.* If any provision of this article is in conflict with a provision of any other county ordinance, resolution or regulation, then this article shall prevail to the extent of such conflict.

(b) *Repeal of conflicting regulations.* All ordinances or parts of ordinances, and resolutions or parts of resolutions, in conflict with this article are hereby repealed, to the extent of said conflict.

(Ord. No. 86-6, § 111, 6-19-86; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-74. Authority; applicability; purpose and intent.**

(a) *Authority.* This article is adopted pursuant to article VIII, section 1(g), Florida Constitution, F.S. chs. 125 and 163, as amended, and the county Home Rule Charter (Laws of Fla. ch. 70-966, as amended).

(b) *Applicability.* This article shall apply throughout the county, both within incorporated municipalities and the unincorporated area.

(c) *Purpose and intent.*

(1) The purpose of this article is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the reasonably anticipated costs of new roads and road system expansion created by the new development activity.

(2) This article is intended to implement and be consistent with the county comprehensive plan.

(Ord. No. 86-6, § 101, 6-19-86; Ord. No. 2003-23, § 1, 12-4-03)

**Charter references:** Conflicts between county and municipal ordinances, § 1305.

## Sec. 70-75. Imposition.

(a) *Applicability of fee.*

(1) Any person who makes or causes the making of an improvement to land which will generate additional traffic and which requires the issuance of a building permit, or any person who changes the use of any building to one which will generate additional traffic, shall be required to pay a thoroughfare road impact fee in the manner and amount set forth in this section.

(2) No person shall undertake construction of an improvement for which the fee imposed by this article is applicable without having paid the proper thoroughfare road impact fee imposed by this article. No person shall change the use or allow a change in use of any building where the fee imposed by this article is applicable without having paid the proper thoroughfare road impact fee imposed by this article.

(b) *Payment of fee required prior to issuance of certificate of occupancy, occupational license or use permit.* No county or municipal certificate of occupancy, occupational license or use permit for which a complete application is submitted after May 1, 1986, for any activity requiring payment of an impact fee pursuant to this article shall be issued unless and until the thoroughfare road impact fee required by this article has been paid. The obligation of a person to pay the fee imposed by this article shall not be extinguished by the inadvertent failure of the county to collect the fee at the time required.

(c) *Methods of determination.* The thoroughfare road impact fee for any development activity generating traffic in the county shall be determined either by using the method set forth in subsection (1) of this subsection (c) or by using the fee schedule set forth in subsection (3) of this subsection (c).

(1) *Independent calculation.* Any person may determine their thoroughfare road impact fee by providing an independent traffic documentation that their impact on the thoroughfare system is less than the thoroughfare road impact fee as determined under subsection (3) of this subsection (c). The documentation submitted shall show the basis upon which the thoroughfare road impact fee has been calculated, which shall conform to the following factors:

a. The trip generation rate, trip length and the percent of new trips shall be documented together. In no event shall they be documented separately. All other variables in the thoroughfare road impact fee formula cannot be altered, but shall be based upon data current at the time this fee shall be due. Petitioners requesting to undertake an independent calculation may substitute the trip generation rate and the percent of new trips and trip length in the thoroughfare road impact fee formula with data obtained from approved traffic surveys and actual traffic counts generated by approved traffic study sites. The thoroughfare road impact fee formula is identified and explained in subsection (2) of this subsection (c).

b. The unit of measure used for trip generation in the independent calculation must be identical to the one used in the thoroughfare road impact fee formula, in order to measure accurately the project's impact on the thoroughfare system.

c. If a single business or shopping center is studied, at least two sites within Volusia County must be tested. The results of each site must be added together and averaged to obtain an alternative trip generation rate, trip length and percent of new trips. The results can be substituted in the thoroughfare road impact fee formula. If the study results indicate a lower fee, the charges will be adjusted accordingly.

d. If no suitable alternative site is available as determined by the county staff, the applicant may



pay the thoroughfare road impact fee, and employ a licensed engineer to conduct a traffic study on the project site within six months after the enterprise is open for business. The traffic study timeframe and monitoring points must be approved by the county staff. Only the trip generation rate, trip length and the percent of new trips can be used in the analysis. Once the results of each sampling point are added together and averaged they may be substituted in the thoroughfare road impact fee formula. The results will be used to determine an appropriate impact fee. If the traffic study results indicate a lower fee and accepted by the county staff, the difference will be refunded to the applicant. All refunds are subject to section 70-78.

e. This documentation shall be prepared and presented by licensed engineers. Specific actions are described in the Guidelines for Alternative Thoroughfare Road Impact Study. The applicant will review the guidelines prior to contacting Growth and Resource Management to obtain approval for the process and obtain a list of the documentation required, which may include but is not limited to: site plans, the number of manual or automated counts, number of personal surveys, the questionnaire format, location of the sampling stations and the layout of the study sites.

(2) *Thoroughfare impact fee formula.* The following formula shall be used to determine the impact fee per unit of development:

TABLE INSET:

Road Impact Fee	=	$\frac{(1/2) \times (TGR) \times (\%NT) \times (DF) \times (ATL) \times (CC/LM)}{\text{Weighted Capacity of 1 Lane Mile}}$	-	(Credits)
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Where:

TABLE INSET:

TGR	=	Trip Generation Rate	=	Number of trips generated based upon land use and Trip Generation per Volusia County Roadway Impact Fee Update Technical Memorandum dated September 25, 2003.
%NT	=	Percent of New Trips	=	Percent of trips generated by the Land Development Activity considered to be new trips on the roadway.
DF	=	Distribution Factor	=	Percent of trips utilizing the county's thoroughfare system = 70.3%, (excluding vehicle miles of travel (VMT) on Interstates.)
ATL	=	Average Trip Length	=	Based upon the land use activity, (excluding local roads.)
CC/LM	=	Construction Cost per Lane Mile	=	1,678,362 Construction costs per lane-mile shall be computed using an average cost per lane-mile derived from the data provided in Volusia County Roadway Impact Fee Update Technical Memorandum dated September 25, 2003.
		Weighted Capacity of 1 Lane Mile	=	10,232 vehicles per day on the thoroughfare road system.
		Credits	=	Value per unit of development for non-site-related improvements entitled to credits under the provisions of section 70-79(b)(2), made to the county's thoroughfare system by or on behalf of the development in question; credits shall also include an amount estimated to include the present value of future payments of gas taxes, motor fuel taxes, and other county taxes utilized to fund capacity expansion of the county's thoroughfare system. Per-unit credits shall be calculated assuming maximum development

			authorized for the particular land use or uses. Also, a one-half mile credit is applied to residential uses.
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(3) *Fee schedule.* The following fee schedule has been prepared based upon the formula presented in Volusia County Roadway Impact Fee Update Technical Memorandum dated September 25, 2003. The rate set for the effective date uses the cost component that is equal to 100% of the county roadway construction costs. For the convenience of the public, the fees which are based on trip generation have been converted to dollar amounts based on dwelling units, bays, building square footage, beds, campsites, parking spaces or rooms, or screens, depending upon the particular land use.

a. The road impact fee schedule is as follows:

TABLE INSET:

Uses	Units	Percent New Trips	Trip Generation Rate	Average Trip Length	Impact Fee with 3% Administrative Fee as of May 1, 2004*	Impact Fee with 3% Administrative Fee as of February 1, 2005*	Impact Fee with 3% Administrative Fee as of February 1, 2006*	Impact Fee with 3% Administrative Fee as of February 1, 2007*
<i>Residential</i>								
Single-family	DU	100.0%	9.57	6.12	\$1,801.55	\$1,919.66	\$2,043.67	\$2,173.88
Apartment	DU	100.0%	6.63	6.12	1,248.10	1,329.92	1,415.83	1,506.04
Residential condominium/townhouse	DU	100.0%	5.86	5.10	914.97	975.23	1,038.51	1,104.96
Mobile home within a park	DU	100.0%	4.81	4.30	629.88	671.58	715.38	761.36
Nonresidential						1,118.29	1,190.49	1,266.31
Hotel	Rooms	66.3%	8.23	6.25	1,049.52	602.13	641.40	682.63
Motel	Rooms	76.6%	5.63	4.30	564.74	192.04	204.83	218.26
Nursing home	Beds	89.0%	2.61	2.60	179.86	1,919.66	2,043.67	2,173.88
<i>Office and Financial</i>								
Office under 10,000 GSF	sq. ft.	92.7%	22.64	5.44	3.59	3.82	4.07	4.32
Office over 10,000 GFS	sq. ft.	92.7%	12.12	5.44	1.92	2.05	2.18	2.31
Corporate headquarters building	sq. ft.	93.0%	7.72	5.44	1.23	1.31	1.39	1.48
Medical office	sq. ft.	83.8%	36.13	4.85	4.62	4.92	5.23	5.56
Hospital	sq. ft.	77.0%	16.78	5.10	2.07	2.21	2.35	2.49
Bank w/drive-thru	sq. ft.	45.5%	265.21	2.40	9.12	9.70	10.31	10.96
Bank w/no drive-thru	sq. ft.	32.0%	156.48	2.40	3.78	4.03	4.28	4.55
<i>Industrial</i>								
Light industry	sq. ft.	91.0%	6.97	5.10	1.02	1.08	1.15	1.22
Manufacturing	sq. ft.	92.0%	3.82	5.10	0.56	0.60	0.64	0.68
Warehouse	sq. ft.	92.0%	4.96	5.00	0.72	0.76	0.81	0.86
Mini-warehousing	sq. ft.	91.0%	2.50	5.00	0.36	0.38	0.41	0.43
<i>Retail</i>								
Retail: Less than 10,000	sq. ft.	48.0%	155.09	1.90	4.45	4.74	5.04	5.35
Retail: 10,000--99,999	sq. ft.	64.0%	68.17	2.10	2.88	3.07	3.26	3.47
Retail: 100,000--1,000,000	sq. ft.	84.0%	27.67	3.50	2.56	2.73	2.90	3.08
Retail: Greater than 1,000,000	sq. ft.	88.0%	25.92	4.30	3.09	3.29	3.49	3.71
Quality restaurant	sq. ft.	76.7%	89.95	3.10	6.73	7.16	7.62	8.09
High-turnover restaurant	sq. ft.	71.6%	130.34	3.00	8.81	9.38	9.97	10.59
Fast food restaurant	sq. ft.	59.5%	496.12	2.06	19.14	20.37	21.66	23.01
CBD sandwich shop	sq. ft.	100.0%	19.30	6.55	3.98	4.23	4.50	4.78
Quick lubrication	Bays	70.7%	42.54	3.38	3,200.41	3,405.40	3,620.64	3,846.65

Auto care	sq. ft.	72.2%	37.60	3.60	3.08	3.27	3.48	3.70
New and used car sales	sq. ft.	79.0%	37.50	4.70	4.38	4.66	4.96	5.27
Tire store/auto repair	Bays	70.7%	30.55	3.38	2,298.36	2,445.58	2,600.15	2,762.46
Supermarket	sq. ft.	62.0%	111.51	2.60	5.66	6.02	6.40	6.80
Convenience store	sq. ft.	41.0%	737.99	1.50	14.29	15.20	16.17	17.17
Convenience store w/gas pumps	sq. ft.	28.5%	845.60	1.60	12.14	12.92	13.73	14.59
Convenience store w/gas & fast food	sq. ft.	33.0%	918.00	2.40	22.89	24.36	25.90	27.51
Home improvement store	sq. ft.	50.0%	38.13	4.99	3.00	3.19	3.39	3.60
Pharmacy/drugstore w/drive-thru	sq. ft.	35.0%	90.76	2.41	2.41	2.56	2.73	2.90
Furniture store	sq. ft.	54.2%	5.06	6.10	0.53	0.56	0.60	0.63
Recreational								
General recreation	Parking space/campsites	100.0%	3.10	6.55	639.26	680.20	723.19	768.34
Major sports facility	Parking space	100.0%	2.10	5.87	388.09	412.94	439.05	466.45
Local park	Parking space	100.0%	3.10	3.00	292.79	311.54	331.23	351.91
District park	Parking space	100.0%	2.11	6.55	435.11	462.98	492.24	522.96
<i>Miscellaneous</i>								
Movie theater	Screens	76.3%	109.97	2.96	7,819.19	8,320.03	8,845.91	9,398.08
Church	sq. ft.	90.0%	9.11	3.90	1.01	1.07	1.14	1.21
Day care	sq. ft.	73.2%	79.26	2.00	3.65	3.89	4.13	4.39

\*Increase based upon the index established in the Volusia County Roadway Impact Fee Update Technical Memorandum dated September 25, 2003.

b. Credits for completed and accepted non-site-related improvements, as described in subsection (1) of this subsection (c), shall be determined for each application, and shall be deducted from the thoroughfare road impact fees listed in the thoroughfare road impact fee schedule, at the time thoroughfare road impact fees are to be paid. The value of non-site-related improvements for which credits may be allowed shall be determined by the county public works service center.

c. Credits for the present value of future gas or motor fuel tax payments utilized to fund capacity expansion of the thoroughfare road systems are included in the calculations of the fee schedule set out in this section.

d. If a building meets the definition of mixed use building as defined by this ordinance, the separate land uses as shown on the approved site plan or building plan shall be identified and appropriately charged according to the fee schedule effective May 1, 2004. If a building has residential and non-residential uses, the square footage of the building identified as residential will be charged based on the number of dwelling units, and then, the square footage identified as non-residential shall be charged based on the remaining principle uses.

e. If the type of development activity for which a building permit is applied is not specified on the fee schedule set out in this section, the county shall use the fee applicable to the most nearly comparable type of land use on the fee schedule. The county shall be guided in the selection of a comparable type by the report titled "Institute of Transportation Engineers, Trip Generation: An Information Report" (sixth or any subsequent editions). If the county determines that there is no comparable type of land use on the fee schedule set out in this section, then the fee shall be determined by using traffic generation statistics contained in the report titled "Institute of Transportation Engineers, Trip Generation: An Information Report" (sixth or any subsequent edition), average trip length and percent of new trips based upon the best data available to the county and by applying the formula set forth in subsection (1) of this subsection.

f. In the case of an expansion of an existing use on the same lot or an adjoining lot (which may be intersected by an easement or right-of-way) requiring the issuance of a building permit, the impact fee shall be based upon the net increase in the impact fee for the new as compared to the

previous use. Provided, however, the impact fee shall be reduced by 50 percent from the amount of the fee that would otherwise be due and payable for an expansion to an existing use. The county shall be guided in this determination by the report titled "Institute of Transportation Engineers, Trip Generation: An Information Report" (sixth or any subsequent edition).

g. In the event the impact fee rate for a particular land use is changed subsequent to the issuance of a building permit and before the issuance of a certificate of occupancy, the impact fee shall be the amount in effect on the date payment is received. If an initial application for a site plan development order has been filed with the relevant local government on or before April 30, 2004, and provided that the project developer has applied for a building permit on or before August 1, 2004, but the developer shall pay the impact fees by January 31, 2005, in compliance with the fee schedule existing on April 30, 2004. In the event the actions of other agencies preclude applying for a building permit by August 1, 2004, the developer may present evidence to the County council that the building permit application has been delayed through no fault of its own. The County council will decide, in its sole and exclusive discretion, whether the development should retain its grandfathered status under this section.

h. The thoroughfare road impact fee on a shopping center shall be computed using one retail-commercial rate for all stores except the out-parcels, which shall be calculated using the rate for that land use from the thoroughfare road impact fee schedule.

i. If an affidavit is filed by the owner of real property with the county or municipality certifying that a farm building on a farm is exempt from issuance of a building permit under Florida law, then the building shall also be exempt from impact fee charges.

j. Road construction and right-of-way credits issued by the county's public works department can be transferred between lots as long as both lots are in the same zone. All transfers must be approved by the county's Director of Growth and Resource Management or the authorized representative.

k. Thoroughfare road impact fees for private universities and colleges shall be based on the number of additional full-time equivalent ("FTE") students that any improvements to the school are designed to accommodate. The fee shall be based on 2.38 trips per FTE as indicated by the Institute of Transportation Engineers Trip Generation Manual, Sixty Edition. Individual studies shall be utilized to demonstrate the average trip length for each proposed project, if the project results in an increase in the planned FTE student capacity. The college or university president shall certify that the project shall not increase said FTE's.

l. When a floor plan/site plan shows flex office/warehouse use, the assessment will be calculated at the light industrial rate for this land use. The county reserves the right to conduct an independent study during the next ordinance update to review the flex office/warehouse use. When cumulative nonwarehouse floor space per building exceeds 35 percent of the total floor space of the building, then the building owner will be required to pay additional road impact fees for that part over the 35 percent converted to other uses based on the road impact fee schedule as set forth in section 70-75(c)(3)a.

(Ord. No. 86-6, § 104, 6-19-86; Ord. No. 86-11, § I, 8-21-86; Ord. No. 88-9, § I, 5-5-88; Ord. No. 90-2, § I, 6-21-90; Ord. No. 93-7, § I, 3-4-93; Ord. No. 95-35, § VIII, 9-7-95; Ord. No. 96-6, § I, 3-28-96; Ord. No. 99-23, § I, 8-26-99; Ord. No. 99-28, § IV, 11-4-99; Ord. No. 01-18, § 1, 8-2-01; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-76. Payment.**

(a) *Time of payment; lien.*

(1) The person applying for the issuance of a building permit shall pay the thoroughfare road impact fee prior to the issuance of a certificate of occupancy, or the occupancy of the building. The county shall issue an impact fee statement to the applicant for a building permit. Such impact fee statement shall set forth the amount of the impact fee due.

The obligation for payment of the impact fee shall run with the land. However, this section shall not be construed to relieve an applicant of responsibility or liability for payment of the impact fees imposed by this article.

In the event the impact fee is not paid prior to the issuance of a certificate of occupancy for the

affected impact construction, the county may collect the impact fee, together with interest, as provided in section 70-76(e).

If no building permit is required upon a change of use of a building, the fee imposed by this article shall be payable at such time as the person making such change shall be required to apply for a county occupational license.

(2) All fees due under this article shall become a lien at the time of the issuance of the building permit or in the case of a change of use on the issuance of an occupational license, as the case may be, such fees shall be due, and shall remain a lien, coequal with the lien of all state, district, county and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Such lien shall be upon the land on which an improvement is made requiring the payment of fees and shall be for the amount of the fee required, as well as for all penalties and interest due under the provisions of this article.

(b) *Method of payment.* Payment of thoroughfare road impact fees shall be made to the County of Volusia.

(c) *Alternate method of payment within municipalities.* A municipality may, through interlocal agreement with the county, arrange for required fees to be paid directly to the municipality in accordance with the interlocal agreement. The failure of a municipality having entered into such an interlocal agreement to collect the required impact fee shall in no event relieve any person from the obligation to pay the fee imposed by this article.

(d) *Disposition of funds.* All funds collected shall be properly identified by thoroughfare road impact fee zone and promptly transferred for deposit into the appropriate thoroughfare road impact fee trust fund to be held in separate accounts as determined in section 70-77(a) and used solely for the purposes specified in this article.

(e) *Interest and administrative; penalty.*

(1) Interest at the rate set by law for judgments shall be due on all fees due under this article from the time such fee was due according to the terms of subsection (a) of this section. The inclusion in this article of provisions concerning interest due shall be deemed to be cumulative of the county's rights already existing as a matter of law to prejudgment interest upon sums which are certain and due and payable at a specific time. Accordingly, the requirement for the payment of interest shall be deemed to apply retroactively to all fees which have previously become due under the terms of this article; and nothing in this article shall be construed in derogation of such right otherwise existing at law.

(2) There shall be due and payable to the county an administrative penalty of five percent per month to a maximum of 25 percent of all fees unpaid at the time they were due according to the terms of this article. Such administrative penalty shall accrue monthly on the anniversary of the date when such fee should have been paid. In the case of fees previously due under the terms of this article, such penalty shall accrue at the rate of five percent per month to a maximum of 25 percent with the first monthly penalty accruing one month following the effective date of the ordinance from which this subsection (e) is derived.

The county attorney or the authorized representative may execute, serve upon the owner by certified mail and record a notice of nonpayment in the official records of the county, which shall contain the legal description of the property and the amount of the impact fee liability. Said notice shall thereupon operate as a lien against such property for the amount of the impact fee, together with interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

(Ord. No. 86-6, § 105, 6-19-86; Ord. No. 86-11, § I, 8-21-86; Ord. No. 88-9, § I, 5-5-88; Ord. No. 95-35, § IX, 9-7-95; Ord. No. 99-28, § V, 11-4-99; Ord. No. 2003-04, § 1, 2-20-03; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-77. Trust funds; use of funds.**

(a) *Trust funds.* There are hereby established separate thoroughfare road impact fee trust funds, one for each thoroughfare road impact fee zone as shown in exhibit A following this article and incorporated in this article by reference. Subsequent to the adoption of the ordinance from which this article is derived, should any parcel or area of land located within a zone be annexed into a municipality which, at the initial effective date of the ordinance from which this article is derived, was located within an adjacent zone, the boundaries of each zone shall be deemed amended as of the date of annexation so as to include the land annexed within the zone of such municipality. Such amendment of zones shall be for the purposes of this article only and shall not affect any prior payment of fees or expenditure of funds attributable to the annexed property.

(b) *Use of funds; administrative fee.*

(1) Funds collected from thoroughfare road impact fees shall be used for the purpose of capital improvements to and expansion of transportation facilities associated with the thoroughfare system plan. Such improvements shall be of the type made necessary by new development. Final determination of projects to be funded using thoroughfare road impact fee revenues shall be made by the county council.

(2) No funds shall be used for periodic or routine maintenance as defined in F.S. § 334.03.

(3) Except as provided in subsection (5) of this subsection, funds shall be used exclusively for capital improvements or expansion within the traffic impact zone from which funds were collected, or for projects in other traffic impact zones which are of direct benefit to the traffic impact zone from which the funds were collected. Funds shall be deemed expended in the order in which they are collected.

(4) There shall be an transportation advisory committee (TAC) for each impact fee zone shown in exhibit A following this article. The TAC for each zone shall include a representative from each municipality within that zone which is then collecting or has provided for collection of fees prescribed by this article in accordance with section 70-76(c). The representative shall be the mayor, a city council or commission member, city manager or administrator, city clerk, city engineer, public works director or city planner or such other staff member designated by the city.

(5) The county public works service center shall, each fiscal year, prepare a preliminary capital improvement road program to be funded from each thoroughfare road impact fee trust fund. The preliminary road program for each zone shall be presented to the TAC for that zone for its review and comment. Comments of each TAC shall be submitted to the county manager. The county manager after review of such comments, shall present to the county council the proposed capital improvement road program in the capital improvements element of the comprehensive plan, assigning funds, including any accrued interest, from the several thoroughfare road impact fee trust funds to specific road improvement projects and related expenses, along with any TAC comments received. Moneys, including any accrued interest, not assigned in any fiscal period shall be retained in the same thoroughfare road impact fee trust fund until the next fiscal period, except as provided by the refund provisions of this article.

(6) The county shall be entitled to collect and retain a three percent administrative fee, which is in addition to the fee otherwise owed. This fee is collected to offset the costs of administering this article.

(Ord. No. 86-6, § 106, 6-19-86; Ord. No. 86-11, § I, 8-21-86; Ord. No. 90-2, § I, 6-21-90; Ord. No. 99-28, § VI, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## Sec. 70-78. Refunds.

(a) If a building permit expires and no construction has been commenced, then the feepayer shall be entitled to a refund of the initial total amount impact fee paid as a condition for its issuance except that the county shall retain a portion of the funds to offset the costs of refund, based on the following schedule:

TABLE INSET:

Fee Paid (Excluding Administrative Fee)	Retained Percent
\$5,000.00 or less	3%
\$5,000.01 plus	3% of the first \$5,000.00 and 1% of the remainder above \$5,000.00

The schedule set out in this subsection shall apply to all requests for refunds originally submitted on or after the effective date of the ordinance from which this subsection is derived (Ordinance No. 93-7), regardless of the date of permit issuance or original fee payment.

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following seven years from the date the thoroughfare road impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to such feepayer with interest at the rate of five percent per annum.

(Ord. No. 86-6, § 107, 6-19-86; Ord. No. 90-2, § I, 6-21-90; Ord. No. 93-7, § II, 3-4-93; Ord. No. 99-28, § VII, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## Sec. 70-79. Exemptions and credits.

(a) *Exemptions.* The following activities shall be exempted from payment of the thoroughfare road impact fee:

- \_\_\_\_\_ (1) Alterations or expansions of an existing building where no additional units are created, and where no additional vehicular trips will be produced over and above that produced by the existing use.
- \_\_\_\_\_ (2) The construction of an accessory building which will not produce additional vehicular trips over and above that which is produced by the principal building or use of the land.
- \_\_\_\_\_ (3) The replacement of a legally permitted building in use on or after May 1, 1986 (the date upon which road impact fees were established in Volusia County), provided, however, that no additional trips will result from the building replacement, in excess of the trips produced by the original use of the land.
- \_\_\_\_\_ (4) The construction of a sanctuary or church adjacent to and in connection with an existing sanctuary or church, notwithstanding that the existing church or facility is not demolished but is used for other church activities, provided that the exemption from the fee which would otherwise be due shall be limited to an amount of square footage equal to the size of the existing sanctuary.

(b) *Credits.*

- \_\_\_\_\_ (1) No credit shall be given for site-related improvements, except as provided for in subsection (2) of this subsection (b).
- \_\_\_\_\_ (2) All roadway improvements and/or right-of-way dedications required under a county or city development order or approval which are included within the roads contemplated in section 70-77(b)(1), except for those improvements deemed site-related, shall be credited against thoroughfare road impact fees. In addition, any person who constructs or contributes land, money or services for any road improvements (whether site-related or not) contemplated in section 70-77(b)(1) which are included within the most recently adopted five-year work program of the county or of the state department of transportation for the county shall be entitled to credits against thoroughfare road impact fees imposed pursuant to this article in accordance with subsection (3) of this subsection (b).
- \_\_\_\_\_ (3) Credits shall apply to the person making the contribution. Such person shall have the right to transfer all or a portion of the available credits. Any transfers of this type which occur shall be filed with growth management services group at the time of or prior to the approval of a development order on a form provided by the county. The costs utilized in computing credits shall be reasonable, but not to exceed the actual, costs of the improvements constructed or contributed. The person seeking determination of the credit shall present cost estimates and property appraisals prepared by qualified professionals to be utilized by the public works service center and growth management services group in determining the amount of credits. The county retains the right to prepare its own cost estimate for its use in determining the credit allowed by this subsection.

(Ord. No. 86-6, § 108, 6-19-86; Ord. No. 88-9, § I, 5-5-88; Ord. No. 96-6, § II, 3-28-96; Ord. No. 99-28, § VIII, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-80. Periodic review.**

(a) *Review of fee formula.* The components of the thoroughfare road impact fee formula shall be reviewed by the county council no less than once every four years.

(Ord. No. 86-6, § 109, 6-19-86; Ord. No. 86-11, § I, 8-21-86; Ord. No. 90-2, § I, 6-21-90; Ord. No. 99-28, § IX, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-81. Administrative review; procedures.**

(a) A feepayer shall have the right of administrative review of any decision relating to:

- \_\_\_\_\_ (1) A determination that a development activity is required to pay an impact fee under this article;
- \_\_\_\_\_ (2) A determination of the amount of the impact fee; or
- \_\_\_\_\_ (3) A determination regarding the amount or application of a credit to be applied against the impact fee.

The administrative review shall be in the form of an administrative review de novo of the decision.

(b) Except as otherwise provided in this article, the administrative review must be requested by the feepayer within 45 calendar days (including Sundays and legal holidays) from the date of issuance of the impact fee statement or the date of the decision sought to be reviewed, whichever shall last occur. Failure to request administrative review within the time provided in this subsection will be deemed a waiver of that right.

(c) A written request for administrative review must be filed with the Director of the Growth and Resource Management Department. The request shall contain the following:

- \_\_\_\_\_ (1) The name and address of the feepayer;
- \_\_\_\_\_ (2) The telephone number at which the feepayer may be reached during daytime hours;
- \_\_\_\_\_ (3) The legal description of the property in question;
- \_\_\_\_\_ (4) If issued, the date the building permit/impact fee statement was issued and the building permit/impact fee statement number;
- \_\_\_\_\_ (5) If paid, the impact fee receipt number and date of payment;
- \_\_\_\_\_ (6) A brief description of the nature of the land development activity to be undertaken pursuant to the building permit/impact fee statement; and
- \_\_\_\_\_ (7) A statement of the reasons why the feepayer is requesting the administrative review, including any supporting information and site or construction plan, if appropriate.

(d) Within 15 calendar days of receipt of a request for administrative review, the decision of the Director of the Growth and Resource Management Department shall be final and shall be binding upon the feepayer and the county.

(e) The determination of the Director of the Growth and Resource Management Department may be reviewed by the County Council in accordance with section 70-82.

(Ord. No. 86-6, § 112, 6-19-86; Ord. No. 90-2, § I, 6-21-90; Ord. No. 93-7, § III, 3-4-93; Ord. No. 99-28, § X, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

## **Sec. 70-82. Final administrative review; hearings.**

(a) A feepayer who is aggrieved by a determination of the Director of the Growth and Resource Management Department shall have the right to request a review hearing before the County Council.

(b) A review hearing shall be limited to a determination of whether the Director of the Growth and Resource Management Department correctly applied this article to the facts and circumstances of the feepayer's case.

(c) A review hearing shall be requested by the feepayer by filing a written request for same with the Director of the Growth and Resource Management Department, within 30 calendar days after the determination is made by the director. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

(d) The written request for review hearing to be filed with the Director of the Growth and Resource Management Department shall contain the following:

- \_\_\_\_\_ (1) The name of the party seeking review, and the address if a feepayer;
- \_\_\_\_\_ (2) The legal description of the property in question;
- \_\_\_\_\_ (3) If issued, the date the building permit/impact fee statement was issued and the building permit/impact fee statement number;
- \_\_\_\_\_ (4) If paid, the impact fee receipt number and date of payment;
- \_\_\_\_\_ (5) A brief description of the nature of the land development activity being undertaken pursuant to the building permit/impact fee statement; and

(e) Upon receipt of a request for review hearing, the Director of the Growth and Resource Management



Department shall schedule a hearing before the council at a regular meeting or special meeting called for the purpose of conducting the hearing. The county shall provide the fee payer with reasonable written notice of the time and place of the hearing. A review hearing shall be held within 45 days of the date the request for hearing was filed.

(f) The review hearing shall be held by the council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present evidence.

(Ord. No. 99-28, § XI, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

#### EXHIBIT A. THOROUGHFARE ROAD IMPACT FEE ZONES

##### *Zone No. 1:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, to the southeast corner of said Section 36; thence east, along the township line, to the northwest corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 is also known as Pioneer Trail); thence easterly, along the centerline of CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north along said east line of the west half of Section 9 and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter, of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to said east line of the west half of said Section 4; thence north, along said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly following the city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along said thread of the Halifax River, to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly, along said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the Atlantic Ocean; thence northerly, along said shoreline of the Atlantic Ocean, to its intersection with the boundary line between Volusia County and Flagler County; thence westerly, south and west, following said boundary line between Volusia County and Flagler County, to the point of beginning.

##### *Zone No. 2:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31, Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 6, Township 17 South, Range 32 East; thence east, along the township line, to the northwest corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 is also known as Pioneer Trail); thence easterly, along the centerline of CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north, along said east line of the west half of Section 9, and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to said east line of the west half of said Section 4; thence north, along said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly, following said city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along said thread of the Halifax River, to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly, along said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the

Atlantic Ocean; thence southerly, along said shoreline of the Atlantic Ocean, to its intersection with the township line between Township 19 South and Township 20 South; thence west, along the last-described township line to the point of beginning.

*Zone No. 3:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31, Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 7, Township 17 South, Range 32 East; thence west, along the south line of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the southwest corner of said Section 6; thence south, along the range line, to the southwest corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East, and continuing west, along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of the northeast quarter of Section 29; thence west to the southwest corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west, along the south lines of Sections 20 and 19, Township 17 South, Range 30 East and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford; thence southerly, along said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence southerly, along said thread of the St. Johns River, to its intersection with the south line of Section 35, Township 21 South, Range 33 East; thence east, along the south lines of Sections 35 and 36, Township 21 South, Range 33 East, to the southeast corner of said Section 36; thence north, along the range line to the point of beginning.

*Zone No. 4:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, along the range line, to the southeast corner of Section 1, Township 17 South, Range 31 East; thence west, along the south lines of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the southwest corner of said Section 6; thence south along the range line, to the southeast corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East; and continuing west along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of the northeast quarter of Section 29; thence west to the southwest corner of said northwest quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west, along the south lines of Sections 20 and 19, Township 17 South, Range 30 East, and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford; thence southerly, along said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence northerly, along said thread of the St. Johns River, to its intersection with the southerly shoreline of Lake George; thence westerly and northerly, along said shoreline of Lake George (west boundary of the county), to its intersection with the

boundary line between Volusia County and Putnam County; thence easterly, along the last-described boundary line, to its intersection with the boundary line between Volusia County and Flagler County; thence easterly, southerly and easterly, following said boundary line between Volusia County and Flagler County, to the point of beginning.

(Ord. No. 99-28, § XII, 11-4-99; Ord. No. 2003-23, § 1, 12-4-03)

Secs. 70-83--70-110. Reserved.

## ARTICLE IV. PARKS IMPACT FEE\*

\*Cross references: Parks and recreation, ch. 82.

### Sec. 70-111. Definitions and rules of construction.

(a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply to the text of this article:

- \_\_\_\_\_ (1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
- \_\_\_\_\_ (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- \_\_\_\_\_ (3) Words used in the present tense shall include the future; and words in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- \_\_\_\_\_ (4) The phrase "used for" includes "arranged for," "designed for," "maintained for" or "occupied for."
- \_\_\_\_\_ (5) The word "person" includes an individual, a corporation, a partnership, a governmental entity or agency, an incorporated association or any other similar entity.
- \_\_\_\_\_ (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of a like kind or character.

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster's New Collegiate Dictionary (G & C Merriam Co., 10th ed. 1993 or any subsequent edition) shall be used for the definition of any words not defined in this section.

*Applicant* means any person applying for or who has been granted a permit to proceed with a project.

*Building* means any structure with an impervious roof built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof."

*Building permit* means the permit required by section 104.1 of the Standard Building Code, Southern Building Code Congress, as adopted by the county.

*Certificate of occupancy* means the official document or permit issued by a municipality or the county evidencing the completion of construction of a building in accordance with all applicable codes and its legal entitlement to permanent occupancy and use.

*Collecting agency* means the county.

*County manager* means the county manager and/or designee.

*District park and local park fee and fee* mean the fee required to be paid in accordance with this article.

*Dwelling* means one or more rooms in a building forming a separate and independent housekeeping establishment, arranged, designed, or intended to be used or occupied by one family, and having no enclosed

space or cooking, or sanitary facilities in common with any other dwelling unit with no ingress or egress through any other dwelling unit, and containing permanent provisions for sleeping facilities, sanitary facilities and not more than one kitchen facility.

*Feepayer* means that person or entity who pays a park impact fee or his/her successor in interest with the right or entitlement to any refund of previously paid development impact fees which are required by this ordinance and which has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment or entitlement to any refund or previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

*Land development activity* means the carrying out of any residential building activity, or the making of any material change in the use or appearance of any structure or land.

*Level of service* The Volusia County Comprehensive Plan has set an adopted level of service standard in the recreation and open space element, based on acreage, as well as minimum facility standards based on park type. The calculation of recreation impact fees shall be based upon the Volusia County Comprehensive Plan's Recreation and Open Space Elements adopted level(s) of service.

*Total park costs* includes, but not limited to, preliminary engineering, engineering design studies, land surveys, property acquisition, engineering, permitting and construction of all the necessary features for park projects, including but not limited to layout of walking paths, construction of ballfields, picnic pavilions, installation of equipment for children's play areas, irrigation systems, lighting systems, fencing, bleachers, roads, parking facilities, restrooms, concession and community buildings, manager quarters and storage buildings.

(Ord. No. 90-1, §§ 102.00, 102.01, 103.00, 103.01, 6-21-90; Ord. No. 95-35, § X, 9-7-95; Ord. No. 98-13, § VIII, 7-23-98; Ord. No. 01-17, § 1, 8-2-01)

**Cross references:** Definitions and rules of construction generally, § 1-2.

## **Sec. 70-112. Interpretation of article.**

(a) *Interpretation.* The provisions of this article shall be liberally construed to effectively carry out its purposes in the interest of public health, safety, welfare and convenience.

(b) *Methods of enforcement.* The county shall withhold any certificate of occupancy or any final inspection approval for construction applicable to this article until the required fee has been paid.

(c) *Building permits not to be issued to persons failing to pay fee.* No building permit shall be issued by the county to any person who, while required by this article to pay a district park and local park impact fee, and has failed to pay such fee.

(d) *Effect on conflicting regulations.* If any provision of this article is in conflict with a provision of any other county ordinance, resolution or regulation, then this article shall prevail to the extent of such conflict.

(Ord. No. 90-1, §§ 110.00, 110.01, 110.03, 6-21-90; Ord. No. 01-17, § 2, 8-2-01)

## **Sec. 70-113. Authority; applicability; purpose and intent.**

(a) *Authority.* This article is adopted pursuant to article VIII, section 1(g), Florida Constitution; F.S. chs. 125 and 163; and the county Home Rule Charter, Laws of Fla. ch. 70-966, as amended.

(b) *Applicability.* This article shall apply throughout the unincorporated area of the county.

(c) *Purpose and intent.*

(1) The purpose of this article is to regulate the use and development of land as to ensure that new residential development bears a proportionate share of the reasonably anticipated costs of new district and local parks created by the new development activity.

(2) This article is intended to implement and be consistent with the county comprehensive plan.

(Ord. No. 90-1, §§ 101.00--101.03, 6-21-90; Ord. No. 98-13, § VIII, 7-23-98)

**Sec. 70-114. Imposition.****(a) Applicability of fee.**

(1) Any person who makes or causes the making of an improvement to land which requires the issuance of a building permit for a residential structure, or any person who changes the use of any structure for residential purposes, shall be required to pay a district park and local park impact fee in the manner and amount set forth in this article. In the event the impact fee rate for a particular land use is changed subsequent to the issuance of a building permit and before the issuance of a certificate of occupancy, the impact fee shall be the amount in effect on the date payment is received.

(2) No person shall commence or continue construction or allow commencement or continuation of construction of an improvement for which the fee imposed by this article is applicable without first having obtained the required building permit and paid the proper impact fee imposed by this article. No person shall change the use or allow a change in use of any structure where the fee imposed by this article is applicable without having paid the proper district park and local park impact fee imposed by this article.

(b) *Payment required prior to issuance of a certificate of occupancy, or occupancy of the building, occupational license or use permit.* No county residential construction certificate of occupancy, or occupancy of the building, for which a complete application is submitted after July 1, 1990, shall be issued unless and until the district parks and local parks impact fee required by this article has been paid. The obligation of a person to pay the fee imposed by this article shall not be extinguished by the inadvertent failure of the county to collect the fee at the time required.

(c) *Formula development.* The following formulas shall be used to determine the district parks and local parks impact fee. If a building permit is requested for a building with mixed uses, then the fee shall be determined through using the schedule by apportioning the space committed to dwelling units. In the case of a change of use, redevelopment or modification of an existing use requiring the issuance of a building permit, the impact fee shall be based upon the net increase in the impact fee for the new as compared to the previous use.

**LOCAL PARKS IMPACT FEE FORMULA****TABLE INSET:**

	Standard No. Acres	$= (A/1,000) \times 2$
Local	Total Park Costs/Acre	$= C + D$
Parks =	Total Park Costs	$= B \times E$
Impact	Total Dwelling Units	$= A/2.3$
Fee	Cost/Dwelling Unit	$= F/G$
	Total Fee/Dwelling Unit	$= H \times 1.03 = J$

**TABLE INSET:**

A	B	C	D	E	F	G	H	I	J
Population	Standard 2 Acres per 1,000 Population	Cost of Land per Acre	Cost of Improvements per Acre	Total Cost/Acre	Total Cost of Parks	Total Dwelling Units	Cost per Dwelling Unit	Administrative Fee	Total Fee per Dwelling Unit
107,540	215.08	\$26,362.70	\$17,090.56	\$43,453.25	\$9,345,900.20	46,756	\$199.88	3%	\$205.88

**DISTRICT PARKS IMPACT FEE FORMULA****TABLE INSET:**

	Standard No. Acres	$= (A/1,000) \times 5$
District	Total Park Costs/Acre	$= C + D$

Parks =	Total Park Costs	= B × E
Impact	Total No. Dwelling Units	= A/2.3
Fee	Cost/Dwelling Unit	= F/G
	Fee/Dwelling Unit	= H × I = J
	Total Fee/Dwelling Unit	= J × 1.03 = L

TABLE INSET:

A	B	C	D	E	F	G	H	I	J	K	L
Population (Seasonal plus Permanent)	Standard 5 Acres per 1,000 Population	Land Purchase Costs per Acre	Land Improvement Costs per Acre	Total Park Costs per Acre	Total Park Costs	Total Dwelling Units	Cost per Dwelling Unit	Bond Credit per Dwelling Unit	Fee per Dwelling Unit	Administrative Fee	Total Fee per Dwelling Unit
123,993	619.96	\$9,677.24	\$19,879.64	\$29,556.88	\$18,324,271.00	53,910	\$339.90	\$63.01	\$276.89	3%	\$285.20

## PARK SUMMARY

*Local Parks*

TABLE INSET:

Zone	Population Estimate per Zone*	Standard Number of Acres per 1,000 Population	Number Park Acres Existing	Number School Acres Existing	Total Acres Existing	Total Acres per Zone Needed	Over or Under
1	57,026	2	103.70	41.0	144.05	114.05	30.65
2	12,815	2	22.80	34.0	56.8	25.63	31.17
3*	30,188	2	53.00	36.0	89.0	60.38	28.62
4	7,591	2	37.50	101.0	138.5	15.02	123.48
Total	107,540		217.00	212.0	429.0	215.08	213.92

\*Population is based on the U.S. Census as of April 1, 2000.

*District Parks*

TABLE INSET:

Population Estimate	Standard Number Acres per 1,000 Population	Number Park Acres Existing	Total Acres Needed	Over or Under
123,993	5	892.50	619.96	272.54 surplus

*Formula Factors:*

\_\_\_\_\_ Total Dwelling Units = Total Population divided by 2.3 persons per dwelling

\_\_\_\_\_ 1. Cost of land per acre = Average cost of land per acre for the type of park specified.

\_\_\_\_\_ 2. Cost of improvements = The average cost to provide park amenities according to the minimum

standards in the comprehensive plan.

- \_\_\_\_\_3. Cost per dwelling unit = The cost per dwelling unit based on the total cost of a minimum equipped park.
- \_\_\_\_\_4. District park population = The number of full-time residents and seasonal residents in the unincorporated area of the county.
- \_\_\_\_\_5. Environmental bond credit = Credits due from lands purchased by the bond fund and developed as district parks.
- \_\_\_\_\_6. Local park population = The number of permanent residents in the unincorporated area.
- \_\_\_\_\_7. Standard acres per dwelling unit = The number of acres required per 1,000 population as set forth in the comprehensive plan.
- \_\_\_\_\_8. The preceding inventory of local and district parks provide basic data used in the formula to calculate the park impact fee.
- \_\_\_\_\_9. The park summary includes the comprehensive plan park standards.
- \_\_\_\_\_Credits for debt service = District parks have credit for lands acquired with bond funds. The present value of these future payments is calculated and credited against impact fee charges.

(d) *Credits for donations.* The donation of land, facilities and equipment may qualify for credits, if consistent with the county's plans and standards for park and recreation for location, size and apparatus specifications, and upon approval by the county manager. The value of the donations or improvements shall be determined by the county parks and recreation director and approved by the growth management and environmental service center director.

(Ord. No. 90-1, §§ 104.00--104.04, 6-21-90; Ord. No. 95-35, § XI, 9-7-95; Ord. No. 98-13, § IX, 7-23-98; Ord. No. 01-17, § 3, 8-2-01)

## **Sec. 70-115. Payment.**

(a) *Time of payment.* The person applying for the issuance of a certificate of occupancy shall pay the district parks and local parks impact fees prior to the issuance of said certificate of occupancy or the occupancy of the building. The county shall issue a building permit that shall set forth the amount of the impact fee due.

The obligation for payment of the impact fee shall run with the land. However, this section shall not be construed to relieve an applicant of responsibility or liability for payment of the impact fees imposed by this article.

In the event the impact fee is not paid prior to the issuance of a certificate of occupancy or the occupancy of the building for the affected impact construction, the county may collect the impact fee, together with interest at the rate fixed by law for judgments, an administrative penalty of five percent per month (to a maximum of 25 percent of all fees unpaid at the time they were due according to the terms of this article), the costs of such collection and a reasonable attorney's fee. Interest and penalties shall be remitted for addition to the trust fund, and the recovered costs and fees for collection shall be retained by or remitted to the government incurring the expense of collection. The county attorney or duly authorized representative may execute, serve upon the owner by certified mail and record a notice of nonpayment in the official records of the county, which shall contain the legal description of the property and the amount of the impact fee liability. Said notice shall thereupon operate as a lien against such property for the amount of the impact fee, together with interest, penalties, and the costs and fees for collection.

All fees due under this article shall become a lien at the time of the issuance of the building permit or in the case of a change of use on the issuance of an occupational license, as the case may be, such fees shall be due, and shall remain a lien, coequal with the lien of all state, district, county and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Such lien shall be upon the land on which an improvement is made requiring the payment of fees and shall be for the amount of the fee required, as well as for all penalties and interest due under the provisions of this article.

(b) *Method of payment.* Payment of district park and local park impact fees shall be made to the County of Volusia.

(c) *Disposition of funds.* All funds collected shall be properly identified as district parks impact fee funds and promptly transferred for deposit into the appropriate trust fund. Funds are to be held in separate accounts as

determined in section 70-116(b) and used solely for the purposes specified in this article.

(Ord. No. 90-1, §§ 105.00--105.03, 6-21-90; Ord. No. 95-35, § XII, 9-7-95; Ord. No. 01-17, § 4, 8-2-01)

### **Sec. 70-116. Trust funds; use of funds.**

(a) Trust funds. There are hereby established a district park and local park impact fee trust funds and are incorporated in this article by reference. Subsequent to the adoption of the ordinance from which this article is derived, should any parcel or area of land located within the unincorporated area of Volusia County be annexed into a municipality which, at the initial effective date of the ordinance from which this article is derived, was located within an adjacent unincorporated area of Volusia County, the boundaries of the municipality shall be deemed amended as of the date of annexation so as to include the land annexed within the municipality. Such amendment shall be for the purposes of this article only and shall not affect any prior payment of fees or expenditure of funds attributable to the annexed property.

(b) Funds identified as district park impact fees shall be deposited into a single trust account with expenditures countywide to support the stated level of service. Local park impact fee funds will be deposited into one of four specific trust funds according to the area where collected as identified in exhibit A following this article. Expenditures will be within these four zones unless a local park project would provide substantial benefit to other zones.

(c) The county manager shall present to the county council the proposed capital improvement program of the capital improvement element of the comprehensive plan for district park and local park facilities, assigning funds, including any accrued interest, from the trust funds to specific improvements and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the district park and local park impact fee trust funds until the next fiscal period except as provided by the refund provisions of this article. Funds shall be deemed expended in the order in which they are collected.

(d) The county shall add three percent to the impact fee calculated for district and local parks. These funds will be retained in the general fund to offset the cost of administering this article.

(Ord. No. 90-1, § 106.00, 6-21-90; Ord. No. 01-17, § 5, 8-2-01)

### **Sec. 70-117. Refunds.**

(a) If a building permit expires and no construction has been commenced, then the feepayer shall be entitled to a refund of the impact fee paid as a condition for its issuance except that the county shall retain a portion of the funds to offset the costs of refund, based on the following schedule:

TABLE INSET:

Fee Paid Excluding Administrative Fee	Retained Percent
\$ 5,000.00 or less	3%
\$ 5,000.01 plus	3% of the first \$5,000.00 and 1% of the remainder above \$5,000.00

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following five years from the date the district park and local park impact fees were paid shall, upon application of the feepayer within 180 days of that date, be returned to such feepayer with interest at the rate of six percent per annum.

(Ord. No. 90-1, § 107.00, 6-21-90; Ord. No. 95-35, § XIII, 9-7-95; Ord. No. 01-17, § 6, 8-2-01)

### **Sec. 70-118. Exemptions and credits.**

The following activities shall be exempted from payment of the district parks and local parks impact fee:

- \_\_\_\_\_(1) Alterations or expansions of an existing building where no additional units are created over that of the existing use.
- \_\_\_\_\_(2) The replacement of a building or structure with a new building or structure with an equal number of dwelling units.



(Ord. No. 90-1, § 108.00, 6-21-90)

### **Sec. 70-119. Adjustments to fee structure.**

(a) *Annual adjustment.* The park impact fee formulas and schedules set out in section 70-114(c) shall be adjusted annually. The total value of the assets will be adjusted based on annual percentage changes in the Consumer Price Index (CPI). Annual changes shall be effective on May 1 of each year, based upon the index change for the 12 months ending on December 31 of the previous year.

(b) *Review.* The district parks and local parks impact fee shall be reviewed by county council no less than once every six years. The review shall consider the adequacy of the service to meet the needs of new demands created by new developments. The purpose of this review is to analyze the effects of inflation on the actual acquisition and operation of the district parks and local parks. This review will consider any changes have occurred in county revenue sources and their effect upon the funding of the district parks and local parks.

(Ord. No. 90-1, § 109.00, 6-21-90; Ord. No. 95-35, § XIV, 9-7-95; Ord. No. 00-24, § 1, 7-6-00; Ord. No. 01-17, § 7, 8-2-01)

### **Sec. 70-120. Administrative review; procedures; final administrative review; hearings.**

Administrative review; procedures; final administrative review; hearings of this article are provided in article III, sections 70-81 and 70-82.

(Ord. No. 90-1, § 112.00, 6-21-90; Ord. No. 01-17, § 8, 8-2-01)

#### **EXHIBIT A. LOCAL PARKS IMPACT FEE ZONES**

##### *Zone No. 1:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, to the southeast corner of said Section 36; thence east, along the township line, to the northwest corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 and also known as Pioneer Trail); thence easterly, along the centerline of CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north along the said east line of the west half of Section 9 and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to the said east line of the west half of said Section 4; thence north, along the said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly following the city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along the said thread of the Halifax River, to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly along the said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the Atlantic Ocean; thence northerly, along the said shoreline of the Atlantic Ocean, to its intersection with the boundary line between Volusia County and Flagler County; thence westerly, south and west, following said boundary line between Volusia County and Flagler County, to the point of beginning; excluding therefrom all areas within the corporate boundaries of any municipality.

##### *Zone No. 2:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31,

Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 6, Township 17 South, Range 32 East; thence east, along the township line, to the northwest corner of Section 5, Township 17 South, Range 33 East; thence south, along the west line of said Section 5, to a point of intersection with the centerline of County Road #4118 (CR #4118 and also known as Pioneer Trail); thence easterly, along the centerline [of] CR #4118, to its intersection with the east line of the west half of Section 9, Township 17 South, Range 33 East; thence north along the said east line of the west half of Section 9 and continuing north along the east line of the west half of Section 4, Township 17 South, Range 33 East, to the southeast corner of the northwest quarter of said Section 4; thence west, along the south line of the northwest quarter of said Section 4, a distance of 176 feet; thence north, a distance of 578 feet; thence east, a distance of 176 feet to the said east line of the west half of said Section 4; thence north, along the said east line of the west half of Section 4, to the north line of said Section 4; thence easterly and northerly, following the said city limits line of the City of Port Orange as now established, to its intersection with the thread of the Halifax River; thence southerly, along the said thread of the Halifax River, to its intersection with the westerly extension of the centerline of Ponce DeLeon Inlet; thence easterly along the said centerline of Ponce DeLeon Inlet, to its intersection with the shoreline of the Atlantic Ocean; thence southerly, along the said shoreline of the Atlantic Ocean, to its intersection with the township line between Township 19 South and Township 20 South; thence west, along the last-described township line to the point of beginning; excluding therefrom all areas within the corporate boundaries of any municipality.

*Zone No. 3:*

Beginning at the southeast corner of Section 36, Township 19 South, Range 33 East; run thence west, along the south lines of Sections 36, 35 and 34, to the southwest corner of said Section 34, Township 19 South, Range 33 East; thence north, along the west lines of Sections 34, 27, 22, 15, 10 and 3, to the northwest corner of said Section 3, Township 19 South, Range 33 East; thence west, along the south lines of Sections 33, 32 and 31, Township 18 South, Range 33 East, to the southwest corner of said Section 31; thence north, along the range line, to the northwest corner of Section 6, Township 18 South, Range 33 East; thence west, along the township line, to the southwest corner of Section 31, Township 17 South, Range 32 East; thence north, along the range line, to the northwest corner of Section 7, Township 17 South, Range 32 East; thence west, along the south line of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the southwest corner of said Section 6; thence south along the range line to the southeast corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East and continuing west along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of northeast quarter of northeast quarter of Section 29; thence west to the southwest corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west along the south lines of Sections 20 and 19, Township 17 South, Range 30 East and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford; thence southerly, along the said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence southerly, along the said thread of the St. Johns River, to its intersection with the south line of Section 35, Township 21 South, Range 33 East; thence east, along the south lines of Sections 35 and 36, Township 21 South, Range 33 East, to the southeast corner of Section 36, thence north, along the range line to the point of beginning; excluding therefrom all areas within the corporate boundaries of any municipality.

*Zone No. 4:*

Beginning at the northeast corner of Section 25, Township 14 South, Range 30 East, said point being in the north boundary line of the county; run thence south, along the range line, to the southeast corner of Section 36, Township 14 South, Range 30 East; thence west, along the township line, to the northeast corner of Section 1, Township 15 South, Range 30 East; thence south, along the range line, to the northeast corner of Section 24, Township 16 South, Range 30 East; thence east, along the north lines of Sections 19 and 20, Township 16 South, Range 31 East, to the northeast corner of said Section 20; thence south, along the east lines of Sections 20 and 29, Township 16 South, Range 31 East, to the southeast corner of said Section 29; thence east, along the north lines of Sections 33, 34, 35 and 36, Township 16 South, Range 31 East, to the northeast corner of said Section 36; thence south, along the range line, to the southeast corner of Section 1, Township 17 South, Range 31 East; thence west, along the south lines of Sections 1 to 6 inclusive, Township 17 South, Range 31 East, to the

southwest corner of said Section 6; thence south along the range line to the southeast corner of Section 13, Township 17 South, Range 30 East; thence west, to the southwest corner of said Section 13; thence south, along the east line of Section 23, Township 17 South, Range 30 East, to the southeast corner thereof; thence west, along the south lines of Sections 23, 22 and 21, Township 17 South, Range 30 East; and continuing west along the north line of Section 29, Township 17 South, Range 30 East, to the northeast corner of the northwest quarter of the northeast quarter of the northeast quarter of said Section 29; thence south to the southeast corner of said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence west to the southwest corner of the said northwest quarter of the northeast quarter of the northeast quarter of the northeast quarter of Section 29; thence north to the south line of Section 20, Township 17 South, Range 30 East; thence west, along the south lines of Sections 20 and 19, Township 17 South, Range 30 East and continuing west along the south line of Section 24, Township 17 South, Range 29 East, to its intersection with the easterly shoreline of Lake Beresford, thence southerly, along the said easterly shoreline of Lake Beresford, to its intersection with the range line between Range 29 East and Range 30 East; thence continuing southerly, along the last-described range line, to its intersection with the township line between Township 17 South and Township 18 South; thence westerly, along the last-described township line, to its intersection with the thread of the St. Johns River, being the west boundary of the county; thence northerly, along the said thread of the St. Johns River, to its intersection with the southerly shoreline of Lake George; thence westerly and northerly, along the said shoreline of Lake George (west boundary of the county), to its intersection with the boundary line between Volusia County and Putnam County; thence easterly, along the last-described boundary line, to its intersection with the boundary line between Volusia County and Flagler County; thence easterly, south and east, following the said boundary line between Volusia County and Flagler County, to the point of beginning, excluding therefrom all areas within the corporate boundaries of any municipality.

Secs. 70-121--70-169. Reserved.

## ARTICLE V. SCHOOL IMPACT FEE\*

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**\*Editor's note:** Section I of Ord. No. 97-7, repealed §§ 70-151--70-169 in their entirety. Formerly, §§ 70-151--70-169 pertained to school impact fees and derived from art. IV, §§ 1.1--1.5, 2.1--2.3, 3.1, 3.3, and 3.4--3.11 of Ord. No. 92-9, adopted July 2, 1992. Section II of Ord. No. 97-7 added new provisions as herein set out.

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### Sec. 70-170. Title, authority and applicability.

(a) This article of chapter 70 shall be known and may be cited as the "Volusia County Educational Facilities Impact Fee Ordinance."

(b) The county council of Volusia County has the authority to adopt this article pursuant to article VIII, section 1 (g), Florida Constitution (1968 revision); F.S. chs. 125, 163, and 235; chapter 70-966 (Volusia County Home Rule Charter), Laws of Florida (Sp. Acts), as amended; and Volusia Ordinance 90-10, adopted on March 15, 1990 (Volusia County Comprehensive Plan), as amended.

(c) This article shall apply uniformly throughout Volusia County, in the unincorporated areas and in all incorporated areas thereof.

(Ord. No. 97-7, § II, 5-15-97)

**Charter references:** Conflicts between county and municipal ordinances, § 1305.

### Sec. 70-171. Definitions.

As used in the article, the definitions of the following words and phrases shall apply, unless the context clearly requires otherwise:

*Ancillary facilities* means the buildings, sites, and site improvements necessary to provide support services to educational programs (e.g., facilities as vehicle maintenance, warehouses, maintenance or administrative buildings not located at school plants).

*Applicant* means the same as the definition of the word "applicant" prescribed in the glossary of the Volusia County Land Development Code, appendix A, Ordinance 88-3, as amended [hereinafter the "VCLDC"].

*Auxiliary facilities* means those portions of a school plant which are not designated for student stations.

*Banberry-Lafferty standard* means the considerations to be used in determining credits in the calculation of proportionate share impact fees derived originally from the case of *Banberry Development Corp. v. South Jordan City*, 631 P.2d 899 (Utah 1981) and *Lafferty v. Payson City*, 642 P.2d 376 (Utah 1982), and adopted and made applicable to Volusia County under the Stipulated Final Judgment.

*Building permit* means the same as the definition of the phrase "building permit" prescribed in the VCLDC, and for purposes of this article, includes a tie-down or installation permit for a building, such as a mobile home, that does not require a building permit in order to be occupied.

*Capital costs of educational facilities* means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes or other financial obligations issued on behalf of the municipality or county to finance the capital improvements element, but such costs do not include routine and periodic maintenance expenditures.

*Capital equipment* means equipment, except for computers, with an expected use life of three years or more.

*Capital improvements* means educational facilities and capital equipment which increase the capacity of the school system.

*Certificate of occupancy* means the official document or permit issued by a municipality in Volusia County or by the county, evidencing the completion of construction of a building in accordance with all applicable codes and its legal entitlement to permanent occupancy and use.

*Comprehensive plan* means the same as the definition of the phrase "comprehensive plan" prescribed in the VCLDC.

*County* means the County of Volusia, a body corporate and politic.

*c* means the County Council of Volusia County, Florida.

*County manager* means the county manager of the county or his or her designee.

*Development* means the same as the definition of the word "development" prescribed in the VCLDC.

*Development order* means the same as the definition of the phrase "development order" prescribed in the VCLDC.

*District* means the Volusia School District.

*District school system* means the educational facilities and ancillary facilities of the district, which are used to provide instruction in the public schools and the administrative or support activities relating to such instruction.

*Dwelling unit* means a building, or a portion thereof, which is designed for residential occupancy, which consists of one or more rooms, and which is arranged, designed or used as living quarters for one family only, and includes multifamily dwelling units and mobile homes.

*Educational facilities* means the building, furniture and capital equipment that are constructed, installed, or established for student stations and ancillary facilities.

*Educational facilities impact fee report* means the report, entitled "Volusia County, Florida, Educational Facilities Impact Fee Report," dated as of May 15, 1997, prepared by James C. Nicholas, Ph.D. and Arthur C. Nelson, Ph.D.

*External revenues* means those revenues of the district which are derived from sources other than local tax sources, which are paid directly or indirectly by new development and which, based on the district's previous five-year historical pattern of funding of capital improvements, are reasonably anticipated to be available to the district to pay for a portion of total capital cost.

*Feepayer* means a person commencing a land development activity in Volusia County, under the land development jurisdiction of the county or a municipality in Volusia County.

*Impact fee* means the fee imposed under section 70-177.

*Impact fee receipt* means the document issued to a feepayer prior to the issuance of a certificate of occupancy.

*Land development activity* means any change in land use or any construction or installation of a dwelling unit, or any change in the use of any structure that will result in additional students in the public schools of the district.

*Local capital revenues* are those revenues of the district which are derived from local tax sources, which are paid directly or indirectly by new development and which, based on the district's previous five-year historical pattern of funding of capital improvements, have been or may be anticipated to be available to the district to pay for a portion of total capital cost.

*Mobile home* means a "manufactured home" as that phrase is defined in the VCLDC, or "park model" vehicles, and which are placed on a lot and which are intended to be used for continuous residential occupancy.

*Multifamily dwelling unit* means a dwelling unit attached to one or more other dwelling units in the same structure, including duplexes, townhouses, apartments, and attached condominiums.

*New dwelling unit* means a dwelling unit constructed after the effective date of this article.

*Net capital cost* means the difference between total capital cost and the sum of the present values of all external revenues and local capital revenues attributable to new dwelling units.

*Other development exactions* means the dedication of the sites for or actual improvements constituting educational facilities, as mandated or required by the county or by a municipality located in Volusia County in connection with the issuance of a development permit.

*Owner* means the same as the definition of the word "owner" prescribed in the VCLDC.

*Person* means the same as the definition of the word "person" prescribed in the VCLDC.

*Prescribed in the VCLDC* means that the quoted word or phrase is defined in the glossary of the Volusia County Land Development Code, appendix A, Ordinance 88-3, as amended.

*Public schools* means all educational facilities for kindergarten classes; elementary and secondary school classes and special classes; adult, part-time, vocational and evening schools, courses, or classes authorized by law to be operated under the control of the school board.

*School board* means the governing board of the district.

*School plant* means the land, building, furniture, equipment and site improvements which are necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services for each student; the term includes educational facilities, ancillary facilities, and auxiliary facilities.

*Stipulated final judgment* means the stipulated final judgment, dated November 21, 1996, nunc pro tunc September 6, 1996, in *Florida Home Builders Association, Inc. et al. v. the County of Volusia, et al.*, filed in the Circuit Court of Volusia County, Florida, as case 93-10992-CIDL Division 01 (J. Smith).

*Student generation rate* means the average number of public school students who are expected to reside in a typical new dwelling unit in the district.

*Student station* means the square footage of building area per student, excluding auxiliary facility spaces and ancillary facility spaces, depending on the type of the instructional programs to be housed in the educational facility.

*Total capital cost* means the total cost of all capital improvements required to increase the capacity of the Volusia District School System, in order to accommodate the demand on that system which is reasonably attributable to the construction of each new dwelling unit in the district. The term includes the cost of financing of that proportion of such cost paid by debt instruments or their equivalent.

(Ord. No. 97-7, § III, 5-15-97)

**Cross references:** Definitions and rules of construction generally, § 1-2.

**Sec. 70-172. Rules of construction.**

(a) This article shall be liberally construed to effectively carry out its purpose in the interest of promoting and protecting the public health, safety and welfare.

(b) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article, unless otherwise stated in this article:

\_\_\_\_\_ (1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.

\_\_\_\_\_ (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

\_\_\_\_\_ (3) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

\_\_\_\_\_ (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

\_\_\_\_\_ (5) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

\_\_\_\_\_ a. "And" indicates that all the connected shall apply.

\_\_\_\_\_ b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

\_\_\_\_\_ c. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

\_\_\_\_\_ (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(c) Nothing in this article shall be construed or interpreted to include the county in the definition of "agency" in F.S. § 120.52, or to otherwise subject the county to the application of the Florida Administrative Procedure Act, F.S. ch. 120.

(Ord. No. 97-7, § IV, 5-15-97)

**Sec. 70-173. Legislative findings.**

The county council of Volusia County makes the following findings of legislative fact:

\_\_\_\_\_ (1) The Florida Constitution requires that adequate provision be made by law for a uniform system of free public schools.

\_\_\_\_\_ (2) Volusia County is constituted as a separate school district, and the school board is empowered by law to operate, control, and supervise all free public schools in the district.

\_\_\_\_\_ (3) The school board is required under F.S. ch. 235, to coordinate school site planning and selection with the county's comprehensive plan.

\_\_\_\_\_ (4) The school board and the county have entered into an interlocal agreement providing for the imposition of an educational facilities impact fee in Volusia County for the benefit of the district.

\_\_\_\_\_ (5) F.S. § 235.193, requires the coordination of planning between school board and the County council to ensure that plans of public educational facilities are coordinated in time and place with plans for residential development and other necessary public services.

\_\_\_\_\_ (6) In order to maintain current levels of service the district school system must expand the capacity of the system if new development in the district is to be accommodated. This expansion of capacity must be done in order to promote and protect the public health, safety and welfare of the residents of Volusia County.

(7) Under F.S. §§ 380.012 and 163.3202, counties are encouraged to adopt innovative land

development regulations which include, among other provisions, impact fees such as the impact fee imposed under this article.

(8) The imposition of an impact fee is one of the preferred methods of ensuring that new development bears a proportionate share of the capital cost of educational facilities which are necessary to accommodate new development. This must be done in order to promote and protect the public health, safety and welfare.

(9) The educational facilities impact fee is derived from, is based upon, and does not exceed the costs of providing for the acquisition of new school sites, the expansion and equipping of existing educational facilities, and the construction and equipping of new educational facilities necessitated by new land development for which the impact fee is imposed.

(10) The educational facilities impact fee report sets forth a reasonable methodology and analysis for the determination of the impact of new land development on the need for and costs of additional educational facilities in the district.

(Ord. No. 97-7, § V, 5-15-97)

### **Sec. 70-174. Intent and purposes.**

(a) This article is consistent with, and intended to assist in the implementation of, the comprehensive plan.

(b) The purpose of this article is to regulate land development so as to assure that new development bears a proportionate share of the cost of accommodating new development with educational facilities.

(c) The educational facilities impact fee report has been approved by the school board.

(d) The application of the *Banberry-Lafferty* standard in the calculation and assessment of the educational facilities impact fee is done to assure that the fee imposed on new development does not require feepayers to bear more than their equitable share of the net capital cost in relation to the benefits conferred.

(Ord. No. 97-7, § VI, 5-15-97)

### **Sec. 70-175. Methodology for calculating the impact fee.**

The amount of the impact fee shall be determined by applying the following formula:

Impact Fee (net capital cost) = Total Capital Cost - External Revenues - Local Revenue Credit

Where:

(1) Based on the educational facilities impact fee report and the annual financial reports of the district, the total capital cost of increasing the capacity of the district school system, in order to accommodate the demand on that system which is reasonably attributable to the construction of new dwelling units is \$4,202.80 per dwelling unit, and the cost of financing is \$645.13 per dwelling unit.

(2) Based on the educational facilities impact fee report and the annual financial reports of the district, external revenues have provided 27.23 percent of the total capital cost.

(3) Based on the educational facilities impact fee report and the annual financial reports of the district, the school district deems that local revenues consisting of past payments of 6.27 percent of local cost, 100 percent of the capital improvement tax and 100 percent of the debt service (bond) tax, and having an aggregate present value of \$2,488.00 have been contributed in the past or will be contributed in the future by impact feepayers to total capital cost.

(4) Based on the educational facilities impact fee report, the annual financial reports of the school district, the *Banberry-Lafferty* standard and the provisions of the stipulated final judgment, the educational facilities impact fee is determined to be \$984.00 per dwelling unit. On January 1, of 1999 and on May 1 of each subsequent year, the growth management department shall adjust the school impact fees accruing on or after those dates, to reflect any inflation or deflation in school construction costs after May 15, 1997 in accordance with the most recently published five-year average inflation rate for total cost per square

foot, in the Florida Department of Education's Annual Public School Cost of Construction Report.

(Ord. No. 97-7, § VII, 5-15-97)

### **Sec. 70-176. Determination of the amount of impact fee.**

(a) Notwithstanding any other provision of this chapter, the amount of the educational facilities impact fee shall be \$850.00 per dwelling unit during the period from the effective date of this article to and including January 1, 1999. After January 1, 1999, the educational facilities impact fee shall be the amount calculated under section 70-175(d).

(b) If a building permit is requested for construction or improvement of a building or structure containing mixed uses, then the impact fee shall be determined by apportioning the space committed to new dwelling units.

(c) In the case of change of use, redevelopment, or expansion or modification of an existing use which requires the issuance of a building permit, the impact fee shall be based upon the number of new dwelling units.

(Ord. No. 97-7, § VIII, 5-15-97)

### **Sec. 70-177. Imposition of educational facilities impact fee.**

(a) After the effective date, the feepayer shall pay an educational facilities impact fee in the amount and on the terms as set forth in this article. The liability for the impact fee shall accrue upon issuance of a building permit for the land development activity. The fee shall be payable not later than the issuance of a certificate of occupancy for the land development activity.

(b) No certificate of occupancy for any land development activity requiring payment of an educational facilities impact fee shall be issued until the impact fee has been finally determined and paid.

(Ord. No. 97-7, § IX, 5-15-97)

### **Sec. 70-178. Method of payment of impact fee.**

(a) The person applying for the issuance of a building permit shall pay the educational facilities impact fee prior to the issuance of a certificate of occupancy, or the occupancy of the building. The county shall issue an impact fee statement to the applicant for a building permit. Such impact fee statement shall set forth the amount of impact fee due.

\_\_\_\_\_ The obligation for payment of the impact fee shall run with the land. However, this section shall not be construed to relieve an applicant of responsibility or liability for payment of the impact fees imposed by this article.

\_\_\_\_\_ The obligation of a person to pay the fee imposed by this article shall not be extinguished by the inadvertent failure of the county to collect the fee at the time required.

In the event the impact fee is not paid prior to the issuance of a certificate of occupancy or the occupancy of the building for the affected impact construction, the county may collect the impact fee, together with interest from the date payment was due at the rate fixed by law for judgements, a penalty of five percent per month (not to exceed 25 percent), the costs of such collection and a reasonable attorney's fee. Interest and penalties shall be remitted for addition to the trust fund, and the recovered costs and fees for collection shall be retained by or remitted to the government incurring the expense of collection. The county attorney, or his duly authorized representative may execute, serve upon the owner by certified mail and record a notice of nonpayment in the official records of the county, which shall contain the legal description of the property and the amount of the impact fee liability. Said notice shall thereupon operate as a lien against such property for the amount of the impact fee, together with interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

\_\_\_\_\_ In the event the impact fee rate for a particular land use is changed subsequent to the issuance of a building permit and before the issuance of a certificate of occupancy, the impact fee shall be the amount in effect on the date payment is received. If no building permit is required upon a change of use of a structure, the fee imposed by this article shall be payable at such time as the person making such change shall be required to apply for a county or municipal occupational license or use permit.



All fees due under this article shall become a lien at the time of the issuance of the building permit or in the case of a change of use on the issuance of an occupational license, as the case may be, such fees shall be due, and shall remain a lien, coequal with the lien of all state, district, county and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Such liens shall be upon the land on which an improvement is made requiring the payment of fees and shall be for the amount of the fee required, as well as for all penalties and interest due under the provisions of this article.

(b) Payment of educational facilities impact fees shall be made to the County of Volusia.

(c) The payment of the impact fee shall be in addition to any other fees, charges, or assessments due for the issuance of a building permit. As a collection allowance for reimbursement for the cost of administering and handling of such impact fees, the collecting county shall be permitted to impose on and retain from each feepayer an administrative fee of three percent (up to a maximum of 50 dwelling units per receipt) over and above the amount to be remitted to the school board under this section.

(d) Educational facilities impact fees collected by a municipality (together with interest actually earned therefrom) shall be segregated and held separately from all other revenues and shall be transferred to the school board on a monthly basis by the 15th day of each month for those impact fees collected in the previous calendar month.

(e) Educational facilities impact fees collected by the county (together with interest earned and credited thereon) shall be segregated and held separately from all other revenues in a separate account. The fees collected shall be transferred to the school board on a monthly basis, by the 15th day of each month, for those impact fees collected in the previous calendar month.

(f) All impact fees collected by the county shall be properly identified and promptly deposited in the Volusia Educational Facilities Impact Fee Trust Account. Funds shall be held in a separate account, as prescribed in section 70-179, and shall be used solely for the purposes specified in section 70-179.

(g) A municipality may, through interlocal agreement with the county, arrange for required fees to be paid directly to the municipality in accordance with the interlocal agreement. The failure of a municipality having entered into such an interlocal agreement to collect the required impact fee shall in no event relieve any person from the obligation to pay the fee imposed by this article.

(Ord. No. 97-7, § X, 5-15-97; Ord. No. 2000-26, § I, 8-17-00; Ord. No. 2003-04, § 2, 2-20-03)

## **Sec. 70-179. Impact fee trust account; use of entrusted funds.**

(a) There is hereby established a separate account to be known as the Volusia Educational Facilities Impact Fee Trust Account.

(b) All funds withdrawn from this account must be used and expended in strict accordance with this section.

(c) The funds transferred to the school board under section 70-178(f) shall be deposited in a separate trust or account established by the school board, i.e., the district impact fee account. The funds deposited in the district impact fee account shall be held and maintained separate from all other accounts of the district. The funds in the account must be used solely for the purpose of paying the capital costs of educational facilities needed to increase the capacity of the district school system in order to accommodate the increased demand on that system which is reasonably attributable to the construction of each new dwelling unit in the district.

(d) Funds deposited in the district impact fee account may be used for repayment of moneys borrowed from any budgetary fund of the county or the school board which is used to fund educational facilities otherwise eligible for funding directly under subsection 70-179(c) above.

(e) Funds deposited in the district impact fee account may be used for payment of principal and interest, necessary reserves and costs of issuance under any bonds, certificates of participation in lease-purchase programs, or other indebtedness issued by or on account of the county or school board, heretofore or hereafter, to fund improvements and additions to the district school system otherwise eligible for funding directly under subsection 70-179(c) above.

(f) Without limiting the restrictions pertaining to the use and expenditure of funds, and as an example, funds on deposit in the district impact fee account shall not be used by the district for operational expenses, routine maintenance or repairs.

(g) Funds on deposit in the district impact fee account which are not immediately necessary for expenditure shall be invested by the school board. All income derived from the investment of such funds shall be deposited in the district impact fee account and held and expended subject to the restrictions imposed in subsection 70-179(c) above.

(h) Concurrent with the receipt of its annual audit, the school board shall provide to the county and to all the municipalities in Volusia County, a report containing a summary of the impact fees collected during the previous year and a detailed description of the uses and expenditures for which the net impact fee revenue was expended during the preceding year.

(i) The County council and the school board will enter into an appropriate interlocal agreement to ensure proper use and expenditure of the impact fees collected under this article.

(j) Funds may be used to provide refunds as described in section 70-180.

(Ord. No. 97-7, § XI, 5-15-97)

### **Sec. 70-180. Refund of impact fee paid.**

(a) If a building permit expires without commencement of construction, then the feepayer or his or her successor or assign may apply to the school district for a refund, without interest, of any educational facilities impact fee paid in connection with its issuance. If the feepayer demonstrates that all rights to commence the construction have irrevocably expired, the county shall refund the fee (or unencumbered portion thereof), after first deducting an administrative fee of three percent of the first \$5,000.00 refunded, and one percent of any remainder.

(b) Any funds held in the district impact fee account which are not expended or encumbered by the end of the fiscal quarter immediately following the sixth year following the date the educational facilities impact fee was collected shall, upon application of the then current owner of the unit for which an educational facilities impact fee was paid, be returned to such owner with interest at the rate of six percent per annum from the date on which the impact fee was actually collected, if the owner submits a timely written application for a refund to the county within 180 days after the expiration of the six-year period. In determining whether the fee paid by the feepayer has been expended or encumbered, funds in the district impact fee account shall be considered to be expended or encumbered on a first in, first out basis.

(Ord. No. 97-7, § XII, 5-15-97)

### **Sec. 70-181. Exemptions and allowable credits.**

(a) The following development activities are exempt from payment of the educational facilities impact fee:

\_\_\_\_\_ (1) Alterations or expansion of an existing building where no additional residential units are created, where the use of such building is not changed, and where no additional public school enrollment will be generated over and above the number produced by the existing use.

\_\_\_\_\_ (2) The construction of accessory buildings or structures which will not produce additional public school enrollment over and above that generated by the principal building or use of the land.

\_\_\_\_\_ (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, provided that no additional public school enrollment will be generated over and above that produced by the original use of the land.

\_\_\_\_\_ (4) The installation of a replacement mobile home on a lot or other such site when the impact fee pertaining to the site has previously been paid pursuant to this article or where a residential mobile home legally existed on such site on or before the effective date of this article.

\_\_\_\_\_ (5) Beginning on or after May 18, 2000, dwelling units in subdivisions, mobile home or manufactured housing parks and multi-family dwellings that are operated as a Community for Older Persons, in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, 42 U.S.C. § 3601-19, and that prohibit any person under the age of 18 years from residing within any dwelling unit on the property as a permanent resident, as evidenced by a recorded declaration of covenants and restrictions not subject to revocation or amendment for a period of at least 30 years from

the date of recording. Said covenants and restrictions shall run with the land.

Any claim of exemption must be made prior to or simultaneously with an application for a building permit or permit for the installation of a mobile home.

(b) Credits against the impact fee.

(1) The value of all land dedications for educational purposes and all educational facilities improvements made, when required by or under color of law (including those required pursuant to F.S. § 380.06(16), with respect to a development of regional impact) shall be credited against the educational facilities impact fee due for the development. The credits shall be determined in the manner prescribed in subsection (b)(3) below.

(2) Any person may seek to obtain a credit against the educational facilities impact fee by dedicating needed school sites or constructing educational facilities or other capital improvements, which are needed by the district and approved by the school board. The offer to make such a dedication must specifically request educational facilities impact fee credits. Construction of all improvements must be in accordance with design standards and specifications prescribed by the applicable state law, administrative rule, or by policy of the school board. If the school board accepts the offer to dedicate, the value of the credits shall be determined as set forth in subsection (b)(3) below.

(3) The following rules shall apply to the determination of the value of credits which are available to the feepayer under subsections (b)(1) and (b)(2) above:

a. Credit for the dedication of land or interest therein shall be valued at:

1. One hundred fifteen percent of the current assessed value for real property taxes of the land, as assessed by the county property appraiser; or

2. By such other appropriate method as the school board may have accepted for particular land dedications or facility improvements made prior to the effective date of this article; or

3. At the option of the feepayer, by fair market value established by at least two certified state appraisers acceptable to the school board.

b. Credit for the dedication of land shall be provided when the land or interest therein has been conveyed to, and accepted by, the school board under the then current policy for the acceptance of dedicated or conveyed lands for this purpose.

c. Credit for construction of educational facilities shall be provided only after the feepayer has submitted acceptable engineering drawings and specifications and construction cost estimates to the school board. The school board shall determine the amount of any credit for educational facility improvements, based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the school board determines that such estimates submitted by the feepayer are either unreliable or inaccurate. The school board shall provide the feepayer and the county manager with a letter certifying the amount of the credit to be granted, the reason for the credit, and the legal description or other adequate description of the development to which the credit may be applied. The feepayer must sign and date a duplicate copy of such letter indicating his or her agreement to the terms of the letter. No credit shall be awarded unless the letter signed by the feepayer is returned to the school board and the county manager. The failure of the feepayer to sign, date, and return the letter within 60 days may be grounds for the nullification of the credit.

d. Except as provided in subparagraph b., credit against impact fees otherwise due will not be provided until:

1. The construction is completed and accepted by the school board or by the appropriate state agency, whichever is applicable;

2. A suitable maintenance and warranty bond is received and approved by the school board, when applicable; and

3. All design, construction, inspection, testing, bonding and acceptance procedures are in strict compliance with the then current requirements of the school board or the Florida Department of Education, when applicable,

before completion of a specified educational facility if adequate assurances are given by the feepayer that the standards set out in subparagraph c. will be met and if the feepayer posts adequate security as provided below, for the costs for such construction. Security in the form of a payment and performance bond, an irrevocable letter of credit, an escrow agreement, or any other functionally equivalent security shall be posted with and approved by the school board. The amount of the adequate security shall be determined by the school board. If the building or improvement will not be constructed within one year of the acceptance of the offer by the school board, the amount of the adequate security may be increased in an amount as determined by the school board consistent with school board policy.

(4) Credits may be transferable from one land development activity to another with the prior approval of the county.

(Ord. No. 97-7, § XIII, 5-15-97; Ord. No. 2000-26, § II, 8-17-00)

## **Sec. 70-182. Administrative review.**

Administrative review shall be as provided in article III, sections 70-81 and 70-82.

(Ord. No. 97-7, § XIV, 5-15-97; Ord. No. 2000-26, § III, 8-17-00)

Sec. 70-183. Reserved.

**Editor's note:** Ord. No. 2000-26, § IV, adopted on August 17, 2000 repealed section 70-183 which pertained to Final administrative review; hearings. See the Code Comparative Table.

## **Sec. 70-184. Article review requirements.**

The impact fee imposed under this article shall be reviewed by the county council at least once every five years. The council shall receive and consider the comments and recommendations of the school board, the East Coast Building Industry Association, Inc. or its successor, and other interested persons, and shall apply the *Banberry-Lafferty* standard. The failure of the school board or the county council to initiate a review in a timely manner shall not affect the validity of this article.

(Ord. No. 97-7, § XVI, 5-15-97)



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