

Sec. 42-151. Vested rights.

(a) Any owner of property which was the subject of a final development order of the city prior to the effective date of the ordinance which amended this section may petition the city for a vested rights determination which would exempt the owner from the provisions of this division. Such petition shall be evaluated by the city attorney and a determination made based on the following criteria:

- (1) The existence of a valid, unexpired governmental act of the city on the specific development for which a determination is sought;
- (2) Expenditures or obligations made or incurred in reliance upon the authorizing governmental act that are reasonably equivalent to the fees required by section 42-145;
- (3) Other factors that demonstrate it is inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirements of this division. For the purposes of this paragraph, the following factor shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:

Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the police impact fee ordinance.

(b) The city attorney shall make a written determination as to whether the owner has a vested right and, if so, whether such vested right would exempt the owner from the provisions of this division.

(c) Any owner aggrieved by a decision of the city attorney pursuant to this section may appeal said decision to the city commissioners within 30 days of the date of the written decision by filing said appeal with the city clerk with a copy to the city attorney.

(Code 1988, § 11.5-91; Ord. No. 98-85, § 11, 12-10-98)

Sec. 42-152. Penalty.

Violation of this division shall constitute a misdemeanor enforceable in accordance with section 1-14 of this Code or by an injunction or other legal or equitable relief in the circuit court against any person violating this division or both civil injunctive and criminal relief.

(Code 1988, § 11.5-92; Ord. No. 98-85, § 12, 12-10-98)

Sec. 42-153. Adoption of background studies.

The city commission hereby adopts by reference the study entitled "Municipal Services Impact Fee Study" dated March, 2004, and all subsequent memoranda prepared by Public Resources Management Group, Inc., particularly as it relates to the allocation of a fair share of costs of public facilities required to provide police protection services necessary to serve new development in the city.

(Ord. No. 98-85, § 14, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

Sec. 42-154. Collections of fees when building permit is issued by mistake or inadvertence; liens.

In the event that the police impact fee is not paid prior to the issuance of a building permit for the construction of a residential structure or a nonresidential structure because of a mistake or inadvertence, the city shall proceed to collect the police impact fee as follows:

The city shall serve, by certified mail, return receipt requested, a police impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. The city shall also attach a copy of the police impact fee statement notice to the building permit posted at the affected construction site if the building is under construction. Service of the police impact fee statement notice shall be deemed notice of the police impact fee due and service shall be deemed effective on the date the return receipt indicates the notice was received by

either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.

The police impact fee statement notice shall contain the legal description of the property and shall advise the applicant and the owner as follows:

- (1) The amount due and the general purpose for which the police impact fee was imposed;
- (2) That a hearing before the city commission may be requested within 30 calendar days from the date of receipt of the police impact fee statement notice, by making application to the office of the city manager.
- (3) That the police impact fee shall be delinquent if not paid and received by the city within 60 calendar days of the date the police impact fee statement notice, or if a hearing is not requested pursuant to subsection (2) above, and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid;
- (4) That in the event the police impact fee becomes delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records book of the county.
- (5) The police impact fee shall be delinquent if, within 60 calendar days from the date of the police impact fee statement notice, or the date said notice was attached to the building permit, neither the police impact fees have been paid and received by the city, nor a hearing requested pursuant to subsection (2) above. In the event a hearing is requested pursuant to subsection (2), the police impact fees shall become delinquent if not paid within 30 calendar days from the date the city commission determines the amount of police impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the

date of the earliest receipt of said police impact fee statement notice or the hearing date of the city commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent of the total police impact fee imposed shall be assessed. Such total police impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.

- (6) Should the police impact fee become delinquent, the city shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant if the building is under construction at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the police impact fee, the city shall file a claim of lien with the clerk of the circuit court in and for the county.
- (7) Upon mailing of the notice of lien, the city attorney shall file a claim of lien with the clerk of the circuit court in and for the county for recording in the official records of the county. The claim of lien shall contain the legal description of the property, the amount of the delinquent police impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien.
- (8) After the expiration of six months from the date of recording of the claim of lien, or after the expiration of one year from the date the impact fee became due and payable, whichever is later, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall

be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

- (9) The liens for delinquent police impact fees imposed hereunder shall remain liens, coequal with the liens of all state, county, district and municipal taxes, superior in dignity to all other subsequently filed liens and claims, until paid as provided herein.
- (10) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the city or any applicable law or administrative regulation of the state. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the state.

(Ord. No. 98-85, § 15, 12-10-98)

Secs. 42-155—42-180. Reserved.

DIVISION 5. FIRE IMPACT FEE*

Sec. 42-181. Short title and authority.

(a) This division shall be known and may be cited as the "Fire Impact Fee Ordinance."

(b) The city commission has the authority to adopt this division pursuant to article VII of the Constitution of the State of Florida and F.S. Ch. 166.

(Code 1988, § 11.5-111; Ord. No. 98-86, § 2, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

*Cross reference—Fire prevention and protection, ch. 46.

Sec. 42-182. Intent and purpose.

(a) This division is intended to implement and be consistent with the city comprehensive plan.

(b) The purpose of this division is to ensure that new development pays its fair share of the anticipated costs of public facilities necessary to provide fire protection for new development.

(c) This division is based upon the city's fee calculation of the anticipated growth in the city and a projection of the public facilities necessary to serve the anticipated growth.

(d) The intent of the city commission is to periodically revise this division to adjust the fee schedule to reflect changes in growth patterns in the city and the cost of public facilities necessary to provide fire protection for new development.

(e) This division supersedes Ord. No. 92-03. (Code 1988, § 11.5-112; Ord. No. 98-86, § 3, 12-10-98)

Sec. 42-183. Definitions.

When used in this division, the following terms shall have the following meanings, unless the context clearly otherwise requires:

Applicant means any person, developer, builder or entity which requires fire protection services within the incorporated city limits as a result of development for the benefit of itself or a prospective future occupant.

Building means any structure, whether temporary or permanent, built for the support, shelter or enclosure of persons, chattels, or property of any kind. This term shall include tents, trailers, mobile homes, or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.

Building permit means an official document or certificate issued by the authority having jurisdiction authorizing the commencement of construction of any building or parts thereof; the term also includes construction plan approval for new mobile home development and new recreational vehicle spaces.

Certificate of occupancy means an official document or certificate issued by a municipality or the county under the authority of ordinance or law authorizing the occupancy for its intended use of a building, or any portion thereof.

Comprehensive plan means the comprehensive plan of the city adopted and amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act.

Encumbered is in reference to funds for capital improvements, funds committed for a specified improvement on a specified time schedule.

Impact fee rate means an impact fee imposed for a particular type of construction under the applicable schedule of impact fees incorporated in section 42-185.

Impact fee statement means the document issued to an applicant prior to the issuance of a building permit containing the calculation of the impact fees imposed on construction in section 42-185.

Nonresidential structure means any building which fully encloses space for the occupancy by persons or their activities other than residential dwellings, including, but not limited to, professional buildings, commercial buildings, industrial buildings, warehouses, public assembly buildings or institutional buildings except for churches, public schools and governmental buildings.

Public facilities means the buildings, structures, equipment and facilities as may be necessary to meet the need for city fire protection, which are created by or a result of new development, including those costs incidental to the above.

Residential dwelling unit means a building, or portion thereof, designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one or more persons.

Residential structure means each single family residential dwelling unit and each residential dwelling unit of a condominium, duplex, triplex, mobile home, modular housing, manufactured home, apartment or multiple dwelling structure designated as a separate housing unit for one or

more persons, whether temporarily or permanently utilized or designed or intended to be utilized for human habitation.

Square footage means the gross area measured in feet from the exterior faces of exterior walls or other exterior boundaries of the building or structure.

(Code 1988, § 11.5-115; Ord. No. 98-86, § 1, 12-10-98)

Cross reference—Definitions generally, § 1-2.

Sec. 42-184. Fee imposed; time of payment.

Any person who, after the effective date of this division [December 10, 1998], seeks to develop land by applying for the issuance of a building permit for any residential or nonresidential structure, as defined in section 42-185 herein, shall be required to pay a fire impact fee prior to the issuance of the building permit or any other development permit for the construction of any structure to be used for a residential or nonresidential use except as provided herein, no building permit shall be issued unless and until the fire impact fee hereby required has been paid.

(Code 1988, § 11.5-113; Ord. No. 98-86, § 4, 12-10-98)

Sec. 42-185. Fee schedule.

(a) The following fire impact fees are hereby charged to the applicant by the city and shall be due and payable at the time of issuance of a building permit for the construction of any structure to be used for a residential or nonresidential use in each district and shall be determined in accordance with the following schedule:

	<i>Structure</i>	<i>As of 3/1/2015</i>
(1)	Residential, per residential dwelling unit	\$491.00
(2)	Nonresidential, per square foot	\$0.85

(b) The fees imposed for residential and nonresidential construction are a result of the city's fee calculation study, which is designed to ensure that the impact fees imposed are rationally related to the benefit received by the applicant.

(c) In the event that an applicant believes the impact of the construction will be less than that set forth above, the applicant may, at his option,

submit evidence to the city commission in support of an alternative assessment. Based upon convincing and competent evidence, the city commission may adjust the impact fee charged to the applicant as appropriate for the particular property. (Code 1988, § 11.5-114; Ord. No. 98-86, § 5, 12-10-98; Ord. No. 04-17, § 1, 8-12-04; Ord. No. 15-11, § IV, 1-22-15)

Sec. 42-186. Annual review.

The city manager shall report annually to the city commission indicating the amount of fees collected under this division and the amount of fees distributed. The city commission shall review the report of the city manager and continue or adjust the fire impact fee as appropriate. (Code 1988, § 11.5-116; Ord. No. 98-86, § 6, 12-10-98)

Sec. 42-187. Reductions for offsetting contributions.

(a) An applicant shall be entitled to a reduction against the fire impact fee charged pursuant to this division in an amount equal to the cost of improvements for fire protection services which create excess capacity for the general public, or offsetting contributions to the city of land, money, facilities, equipment, or other public facilities by the applicant or his predecessor in interest as a condition of any development agreement entered into with the city. Such impact fee reduction shall be based on the following criteria:

- (1) The actual cost, or estimated cost based on recent bid sheet information of the city, of off-site related improvements. Improvements eligible as off-site contributions are those improvements proposed that will benefit not only the residential and non-residential structures on-site, but also the general public. Improvements not eligible as off-site contributions are those facilities that are privately owned or that serve only those respective structures within the development.
- (2) The actual cost or estimated cost of improvements based on recent bid sheet information of the city with respect to

that portion of on-site improvements which create excess capacity for the general public.

- (3) The contribution of land, money, facilities, equipment or public facility by the applicant for improvements to the city's fire department which create excess capacity for the general public. The impact fee reduction for land contributed will be based on a pro rata share of the appraised land value of the parent parcel as determined by an M.A.I. appraiser selected and paid for by the applicant and approved by the city manager, or based on such other method as may be mutually agreed upon by the applicant and the city manager. In the event the city manager disagrees with the appraised value, the city may select and pay for another appraiser and the impact fee reduction shall be an amount equal to the average of the two appraisals.
- (4) Unless otherwise provided in a development agreement between the city and the applicant or his predecessor in interest, no impact fee reduction for contributions or donations made prior to the effective date of this division [December 10, 1998] shall be granted unless the cost of the improvements were paid for or the contributions were made within two years prior to the effective date of this division [December 10, 1998].
- (5) No impact fee reduction shall exceed the amount of the fire impact fee charged under subsection (a)(4) above.
- (6) No impact fee reduction shall be allowed for the oversizing of water lines, widening of roads or other improvements with only an indirect benefit for fire protection.
 - (b) The amount of the impact fee reduction shall be determined by the city manager, provided, however, that the determination may be appealed to the city commission, whose decision shall be final and binding on the applicant.
 - (c) Any impact fee reduction issued pursuant to this section may be transferred by the applicant to any successor in interest in the property. (Code 1988, § 11.5-117; Ord. No. 98-86, § 7, 12-10-98)

Sec. 42-188. Exemptions.

The following shall be exempt from payment of the fire impact fee:

- (1) Those residential or nonresidential structures which have been issued an unexpired building permit or certificate of occupancy prior to the effective date of this division [December 10, 1998].
 - (2) Additions to or expansions of single family dwellings.
- (Code 1988, § 11.5-118; Ord. No. 98-86, § 8, 12-10-98)

Sec. 42-189. Vested rights.

(a) Any owner of property which was the subject of a final development order of the city prior to the effective date of this division [December 10, 1998], may petition the city for a vested rights determination which would exempt the owner from the provisions of this division. Such petition shall be evaluated by the city attorney and a determination made based on the following criteria:

- (1) The existence of a valid, unexpired governmental act of the city on the specific development for which a determination is sought;
- (2) Expenditures or obligations made or incurred in reliance upon the authorizing governmental act that are reasonably equivalent to the fees required by section 42-185;
- (3) Other factors that demonstrate it is inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirements of this division. For the purposes of this paragraph, the following factor shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development;

Whether the injury suffered by the owner outweighs the public cost of

allowing the development to go forward without payment of the Fire Impact Fee Ordinance.

(b) The city attorney shall make a written determination as to whether the owner has a vested right and, if so, whether such vested right would exempt the owner from the provisions of this division.

(c) Any owner aggrieved by a decision of the city attorney pursuant to this section may appeal said decision to the city commissioners within 30 days of the date of the written decision by filing said appeal with the city clerk with a copy to the city attorney.

(Code 1988, § 11.5-119; Ord. No. 98-86, § 9, 12-10-98)

Sec. 42-190. Establishment of fund.

The fire impact fee collected by the city pursuant to this division shall be accounted for separately from other revenues of the city. Funds withdrawn from this account must be used solely in accordance with the provisions of this division. The disbursement of funds shall require the approval of the city commission.

(Code 1988, § 11.5-120; Ord. No. 98-86, § 10, 12-10-98)

Sec. 42-191. Use.

(a) The funds collected by reason of establishment of the fire impact fee in accordance with this division shall be used solely for the purpose of acquisition or financing of public facilities determined to be needed to provide fire protection for new development within the city.

(b) All funds shall be used in a manner which is reasonably designed to benefit the contributor and which is consistent with the principles set forth in Florida Statutes and case law and otherwise consistent with all requirements of the Constitution of the United States and the State of Florida. Said funds shall not be used to maintain

or repair existing fire facilities or equipment or to acquire facilities or equipment to serve existing development.

(c) Any funds on deposit not immediately necessary for expenditure shall be invested in an interest bearing account. All income derived shall be deposited in the appropriate fire impact fee fund.

(d) If the fees have not been expended or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, upon application of the fee payer of proof of payment or the development for which the fees were paid was never begun, the fees shall be returned with interest at the rate determined by the city based upon the average interest earning rate incurred by the city in accordance with the following procedure.

- (1) The then present owner must petition the city commissioners for the refund within one year following the end of the calendar quarter immediately following six years from the date on which the fee was received.
 - (2) The petition must be submitted to the city manager and must contain:
 - a. A notarized sworn statement that the petitioner is the current owner of the property;
 - b. A copy of the dated receipt issued for payment of the fee;
 - c. A certified copy of the latest recorded deed; and
 - d. A copy of the most recent ad valorem tax bill.
 - (3) If reimbursement is approved, the city shall remit to the present owner of the petition within 60 days of approval.
- (Code 1988, § 11.5-121; Ord. No. 98-86, § 11, 12-10-98)

Sec. 42-192. Penalty.

Violation of this division shall constitute a misdemeanor enforceable in accordance with section 1-14 of this Code or by an injunction or other

legal or equitable relief in the Circuit Court against any person violating this division or both civil injunctive and criminal relief.

(Code 1988, § 11.5-122; Ord. No. 98-86, § 12, 12-10-98)

Sec. 42-193. Adoption of background studies.

The city commission hereby adopts by reference the March, 2004, study entitled "Municipal Services Impact Fee Study" and all subsequent memoranda prepared by Public Resources Management Group, Inc., particularly as it relates to the allocation of fair share of costs of public facilities required to provide fire protection services necessary to serve new development to the city.

(Ord. No. 98-86, § 14, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

Sec. 42-194. Collections of fees when building permit is issued by mistake or inadvertence; liens.

In the event that the impact fee is not paid prior to the issuance of a building permit for the construction of a residential structure or a non-residential structure because of a mistake or inadvertence, the city shall proceed to collect the impact fee as follows:

The city shall serve, by certified mail, return receipt requested, an impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. The city shall also attach a copy of the impact fee statement notice to the building permit posted at the affected construction site if the building is under construction. Service of the impact fees statement notice shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.

The impact fee statement notice shall contain the legal description of the property and shall advise the applicant and the owner as follows:

- (1) The amount due and the general purpose for which the impact fee was imposed;
- (2) That a hearing before the city commission may be requested within 30 calendar days from the date of receipt of the impact fee statement notice, by making application to the office of the city manager of the city.
- (3) That the impact fee shall be delinquent if not paid and received by the city within 60 calendar days of the date the impact fee statement notice, or if a hearing is not requested pursuant to subsection (2) and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid;
- (4) That in the event the impact fee becomes delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records book of the county.
- (5) The impact fee shall be delinquent if, within 60 calendar days from the date of the impact fee statement notice, or the date said notice was attached to the building permit, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to subsection (2). In the event a hearing is requested pursuant to subsection (2), the impact fees shall become delinquent if not paid within 30 calendar days from the date the city commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of the earliest receipt of said impact fee statement notice or the hearing date of the city commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent,

a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis until paid.

- (6) Should the impact fee become delinquent, the city shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant if the building is under construction at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the impact fee, the city shall file a claim of lien with the clerk of the circuit court in and for the county.
- (7) Upon mailing of the notice of lien, the city attorney shall file a claim of lien with the clerk of the circuit court in and for the county for recording in the official records of the county. The claim of lien shall contain the legal description of the property, the amount of the delinquent impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien.
- (8) After the expiration of six months from the date of recording of the claim of lien, or after the expiration of one year from the date the impact fee became due and payable, whichever is later, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein