

(b) 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. 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 the notice was attached to the building permit, whichever occurs first.

(c) The impact fee statement notice shall contain the legal description or tax parcel identification number 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) A hearing before city commission to challenge the impact fee assessed may be requested within 30 calendar days from the date of receipt of the impact fee statement notice, by filing a written application to the office of the city manager. The written application shall state with specificity the basis of the challenge.
- (3) The impact fee shall be delinquent if not paid and received by the city within 30 calendar days of the date the impact fee statement notice is received, excluding the date of receipt or if a hearing is not requested pursuant to subsection (c)(2) of this section and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid. If the impact fee becomes delinquent, a lien against the property for which the building permit was secured shall be recorded in official records book of the county.
- (4) The impact fee shall be delinquent if, within 30 calendar days from the date of the receipt of the impact fee statement notice by either the applicant or the owner or the date the 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 (c)(2) of this section. If a hearing is requested pursuant to subsection (c)(2) of this section, 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. Such time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of the earliest receipt of the impact fee statement notice or the hearing date of the city commission's decision for an appeal. If 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.

- (5) If the impact fee becomes delinquent, the city shall serve, by certified mail return receipt requested, a notice of lien upon the delinquent applicant 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 record a claim of lien in the official public records of the county.
- (6) Upon mailing of the notice of lien, the city attorney shall cause the recording of a claim of lien in the official public 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 the lien.

- (7) 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, the later of the two, as provided in this section, a suit may be filed to foreclose the 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—173.12, inclusive, which provisions are incorporated in this section in their entirety to the same extent as if such provisions were set forth verbatim.
- (8) The liens for delinquent impact fees imposed under this section shall remain liens, coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other subsequently filed liens and claims, until paid as provided in this section.
- (9) 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.

(Code 1988, § 11.5-34; Ord. No. 10-01, § I, 1-14-10)

Sec. 42-65. Penalty.

Violations of this division shall be enforceable in accordance with section 1-15 or by an injunction or other legal or equitable relief in the circuit court against any person violating this division or by both civil injunctive and criminal relief.

(Code 1988, § 11.5-35)

Sec. 42-66. Rules of construction.

For the purposes of administration and enforcement of this division, unless otherwise stated in this division, the following rules of construction shall apply:

- (1) If there is any difference of meaning or implication between the text of this division 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 word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- (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. The term "and" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. The term "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. The term "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.
- (7) Where a road right-of-way is used to define benefit area boundaries, that portion

of the road right-of-way demarcating the boundary may be considered as part of either benefit area it bounds.

(Code 1988, § 11.5-37)

Sec. 42-67. Adoption of background studies.

The city commission adopts by reference the March, 2004, study entitled "City of Winter Garden Road Impact Fee Study" prepared by Dyer, Riddle, Mills & Precourt, Inc., and any exhibits or memoranda to that study, particularly as they relate to the allocation of a fair share of the costs of new road improvements necessary to serve new development in the city.

(Code 1988, § 11.5-38; Ord. No. 98-89, § I, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

Sec. 42-68. Economic impact determination.

The city commission hereby determines and finds that sufficient information has been provided for the city commission to assess the economic impact of this division on the development of real property in the city. The commission does hereby determine and find that no further economic impact statement or economic impact information is required in this matter. If the ongoing planning studies and annual review reveal a detrimental economic impact, this division shall be reviewed and revised accordingly.

(Code 1988, § 11.5-39)

Secs. 42-69—42-95. Reserved.**DIVISION 3. RECREATION IMPACT FEE****Sec. 42-96. Short title and authority.**

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

(b) The city commission has the authority to adopt this Ordinance pursuant to article VIII of the constitution of the state and F.S. Chs. 163 and 166.

(Code 1988, § 11.5-51; Ord. No. 98-87, § 2, 12-10-98)

Sec. 42-97. 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 needed recreation public facilities necessary to serve new development.

(c) This division is based upon the city's fee calculation study 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 recreation facilities for new development.

(e) This division supersedes Ord. No. 90-26. (Code 1988, § 11.5-52; Ord. No. 98-87, § 3, 12-10-98)

Sec. 42-98. 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 recreational 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 42-100.

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 42-100.

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 recreational services, 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, § 11.5-53; Ord. No. 98-87, § 1, 12-10-98)

Cross reference—Definitions generally, § 1-2.

Sec. 42-99. 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 structure, as defined in section 42-98 herein, shall be required to pay a recreation 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 use, except as provided herein, no building permit shall be issued unless and until the recreation impact fee hereby required has been paid.

(Code 1988, § 11.5-54; Ord. No. 98-87, § 4, 12-10-98)

Sec. 42-100. Recreation impact fee schedule.

(a) The recreation impact fee is hereby charged to each 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 use, and shall be determined in accordance with the following schedule:

	<i>Structure</i>	<i>As of 3/1/2015</i>
(1)	Single-family, per unit	\$1,300.00
(2)	Multi-family, per unit	\$1,159.00
(3)	Mobile home	\$874.00

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

(c) In the event that an applicant for a building permit contends that the new building for which the building permit is requested is not within the categories set forth in subsection (a) above, or is within a different category, then the city manager shall make a determination as to the appropriate category. Such determination may be appealed to the city commission, whose decision shall be final and binding on the applicant.

(d) 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, § 11.5-55; Ord. No. 98-87, § 5, 12-10-98; Ord. No. 04-17, § 1, 8-12-04; Ord. No. 15-11, § II, 1-22-15)

Sec. 42-100.5. Annual review.

The city manager shall report annually to the city commission indicating the amount of fees collected under this ordinance and the amount of fees distributed. The city commission shall review the report of the city manager and continue or adjust the recreation impact fee as appropriate. (Ord. No. 98-87, § 6, 12-10-98)

Sec. 42-101. Reserved.

Editor's note—Ordinance 04-17, § 1, adopted August 12, 2004, repealed § 42-101 in its entirety. Formerly, such section pertained to alternative recreation impact fee calculation and derived from § 11.5-56 of the 1988 Code; Ord. No. 98-87, § 7, 12-10-98.

Sec. 42-102. Payment.

Except as provided for in section 42-103, the recreation impact fee shall be due and payable at the time of issuance of the building permit for a new building. Impact fees shall be paid in cash

unless the city has entered into a development agreement with an applicant as set forth in section 42-103.

(Code 1988, § 11.5-57)

Sec. 42-103. Development agreements.

(a) An applicant may enter into a development agreement with the city to establish recreation impact fees or to provide equivalent recreational facility improvements necessary to serve new buildings. A development agreement may include, but shall not be limited to, provisions which:

- (1) Permit the construction of recreation facility improvements in lieu of or with a credit against the recreation impact fee otherwise assessable under section 42-100 above;

