

ner. This division will only partially recoup the governmental expenditures associated with growth. Under this division existing residents also shall pay a fair share of the costs of needed improvements to the major road network system.

(f) Absent an impact agreement pursuant to section 42-56, it shall be the policy of the city to collect the impact fees assessed by this division in lieu of any off-site road improvements.

(g) The technical data, findings and conclusions in this division are based on the comprehensive plan, as amended, the Winter Garden Area Transportation Study as written by Transportation Consulting Group and adopted by the city commission on March 28, 1996, the Evaluation and Appraisal report as adopted by the city commission on September 24, 1998, the Orlando Urban Area Transportation Study, the Orange County 1998 Road Impact Fee Update Study and a study by an independent firm of engineers, surveyors, scientists and planners, Dyer, Riddle, Mills & Precourt, Inc., completed August 1990, and updated in 1998, and a city staff study entitled Southern Benefit Area Transportation Impact Fee Study, which was completed in April of 2000.

(h) This division supersedes Ordinance No. 89-68, the Interim Road Impact Fee Ordinance. (Code 1988, § 11.5-23; Ord. No. 98-89, § I, 12-10-98; Ord. No. 00-38, § II, 6-22-00)

Sec. 42-54. Limitation on issuance of building permit.

Any person who applies for the issuance of a building permit for a new building, including

single-family residential buildings, or for additions or expansions to buildings other than existing single-family residential buildings shall be required to pay a road impact fee in the manner and amount set forth in this division. Except as provided in this division, any building permit issued is issued subject to the required road impact fee being paid when due under this division.

(Code 1988, § 11.5-24; 10-01, § I, 1-14-10)

Sec. 42-55. Road impact fee schedule.

(a) The road impact fee for all areas in the city shall be determined in accordance with the schedule set forth as identified in exhibit "A", Traffic Impact Fee Rates.

* The business park category will be used for all speculative heavy commercial or industrial incubators.

(b) If an applicant for a building permit contends that the land use for which the building permit is requested is not within the categories set forth in subsection (a) of this section or is within a different category, the development review committee shall make a determination as to the appropriate land use designation. Such determination may be appealed to the city commission, whose decision shall be final and binding on the applicant.

(Code 1988, § 11.5-25; Ord. No. 98-89, § I, 12-10-98; Ord. No. 00-38, § II, 6-22-00; Ord. No. 04-17, § 1, 8-12-04; Ord. No. 06-39, § I, 10-26-06; Ord. No. 06-40, § 2, 10-26-06; Ord. No. 10-01, § I, 1-14-10; Ord. No. 12-61, § I, 10-25-12)

Exhibit "A"
Traffic Impact Fee Rates

<i>Land Use</i>	<i>Unit</i>	<i>ERU</i>	<i>Fee</i>
SINGLE FAMILY RESIDENTIAL	Dwelling	1	\$3,517
MULTI FAMILY	Dwelling	0.70	\$2,470
MOBILE HOME	Dwelling	0.52	\$1,834
OFFICE 0—100,000	1,000 sq. ft.	1.63	\$5,748
OFFICE 100,001—200,000	1,000 sq. ft.	1.27	\$4,466
OFFICE 200,000>	1,000 sq. ft.	1.08	\$3,808
RETAIL 0—50,000	1,000 sq. ft.	3.62	\$12,716
RETAIL 50,001—100,000	1,000 sq. ft.	2.41	\$8,479
RETAIL 100,001—300,000	1,000 sq. ft.	2.17	\$7,645

<i>Land Use</i>	<i>Unit</i>	<i>ERU</i>	<i>Fee</i>
RETAIL 300,001—500,000	1,000 sq. ft.	2.07	\$7,276
RETAIL 500,001—1,000,000.00	1,000 sq. ft.	1.82	\$6,392
GREATER THAN 1,000,000 SF	1,000 sq. ft.	1.52	\$5,344
HOSPITAL	1,000 sq. ft.	1.25	\$4,391
MANUFACTURING	1,000 sq. ft.	0.40	\$1,404
WAREHOUSING	1,000 sq. ft.	0.52	\$1,823
HOTEL/MOTEL	Room	0.95	\$3,348
RESTAURANT SIT-DOWN	1,000 sq. ft.	4.85	\$17,048
BANK	1,000 sq. ft.	8.74	\$30,730
MINI-WAREHOUSE	1,000 sq. ft.	0.26	\$919
DAY CARE	1,000 sq. ft.	1.58	\$5,547
RACQUET CLUB	1,000 sq. ft.	0.49	\$1,718
SCHOOL	1,000 sq. ft.	0.92	\$3,222
DRUG STORE	1,000 sq. ft.	3.01	\$10,592
FAST FOOD REST. W/DRIVE-THRU	1,000 sq. ft.	16.59	\$58,351
MEDICAL-DENTAL OFFICE	1,000 sq. ft.	3.78	\$13,279
AUTO CARE CENTER	1,000 sq. ft.	0.54	\$1,903
QUICK LUBE CENTER	Bay(s)	1.36	\$4,799
GAS PUMPS	/fueling position	3.16	\$11,102
CONVENIENCE STORE	/1000 sq. ft.	13.82	\$48,607
BOWLING ALLEY	1,000 sq. ft.	1.16	\$4,082
MOVIE THEATER	1,000 sq. ft.	5.55	\$19,509
SUPERMARKET	1,000 sq. ft.	4.38	\$15,392
BUSINESS PARK*	1,000 sq. ft.	1.33	\$4,690

*The business park category will be used for all speculative heavy commercial or industrial incubators. (Ord. No. 06-39, § II, 10-26-06; Ord. No. 10-01, § I, 1-14-10)

Sec. 42-56. Alternative road impact fee calculation.

(a) If an applicant believes that the cost of his off-site roadway improvements needed to serve his proposed development will be less than that established in section 42-54, the applicant may submit an alternative road impact fee calculation, prepared by a competent professional within the traffic engineering field, to the city manager. The city manager may request an alternative impact fee calculation in lieu of the standard fee structure, if, in the manager's opinion, a study is warranted by exceptional traffic generation characteristics of the proposed development.

(b) The city manager shall review the data, information, and assumptions used by the applicant in the alternative road impact fee calculation

to determine whether the requirements of this section are satisfied. If the city manager finds that data, information, and assumptions used by the applicant to calculate the alternative impact fee satisfy the requirements of this section, he shall recommend an alternative road impact fee for the applicant to the city commission. If the city manager finds the requirements of this section are not satisfied, he shall so advise the applicant. The applicant may appeal the city manager's decision to the city commission, and the decision of the city commission as to an alternative road impact fee or the road impact fee schedule shall be final and binding on the applicant.

(c) The alternative road impact fee shall be calculated by use of the following formula:

$$\text{Alternative Impact Fee} = \frac{(ADT) \times (DF) \times (TL) \times (C)}{CAP \times 2} \quad (1 + IF)^n \times (1+FS)$$

Where:

- ADT = Number of average daily trip ends generated
 - DF = Diversion capture factor (% new trips)
 - TL = Local trip length for each proposed use
 - CAP = Typical new capacity per lane mile in vehicles per day at LOS D (7500)
 - C = Cost of right-of-way acquisition plus construction costs (\$4,945,000.00 per lane mile in 2005 dollars)
 - IF = Inflation Factor projected at 2.5% per year
 - ⁿ = Number of periods from the base year of 2005
 - FS = Financing surcharge of 29.90%
-

(d) One ERU equals the amount of traffic from one single family residential unit.

(e) The alternative road impact fee calculations shall be based on data, information or assumptions contained in this division and supporting documents, or provided by independent sources, provided that:

- (1) The independent source is an accepted standard source of transportation engineering or planning data or information;
- (2) The independent source is a local study carried out by a qualified traffic planner or engineer pursuant to an accepted methodology of transportation planning or engineering; or
- (3) If a prior approved development submitted, during the approval process, a traffic impact study substantially consistent with the criteria required by this division, and if that study is determined by the city manager to still be valid, the traffic impacts of the approved development shall be presumed to be as described in such prior study. In such circumstances, the road impact fee payable for such development under this division shall be revised accordingly to reflect the presumed traffic impact of such development. There shall be a rebuttable presumption that a traffic impact study conducted more than one

year prior to the effective date of the ordinance from which this division derives is invalid. This subsection shall not apply where a development order previously granted provides that this division shall supersede such traffic impact study.

(f) The diversion and capture factor used in the alternative road impact fee calculations shall be that used in the March, 2004, City of Winter Garden Road Impact Fee Study or based on actual surveys conducted in the city or West Orange County. For the purposes of the alternative road impact fee calculation, the diversion and capture factor shall be the percentage of average daily trips that a proposed use will generate that constitutes new or additional trips added to the city's major road network system. Those trips that do not represent additional trip ends shall not be counted as new or additional trips.

(g) The new building shall be presumed to generate the maximum number of average daily trips to be generated by the most intensive use permitted under the applicable land development regulations, such as the comprehensive plan or zoning regulations, or under applicable deed or plat restrictions.

(h) The cost of development and the city review of the alternative road impact fee calculation shall be paid by the applicant. Upon submittal of

the alternative road impact fee calculation by the applicant, the finance department shall collect a review deposit of \$1,000.00 from the applicant.

(i) A determination by the city manager that the alternative calculation does not satisfy the requirements of this section may be appealed to the city commission.

(Code 1988, § 11.5-26; Ord. No. 98-89, § I, 12-10-98; Ord. No. 00-38, § II, 6-22-00; Ord. No. 04-17, § 1, 8-12-04; Ord. No. 06-39, § I, 10-26-06; Ord. No. 06-40, § 2, 10-26-06; Ord. No. 12-61, § I, 10-25-12)

Sec. 42-57. Development agreements.

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

- (1) Permit the construction of specific road system improvements in lieu of or with a credit against the road impact fee otherwise assessable under sections 42-55 or 42-56.
- (2) Provide for a transfer of credits as provided for in section 42-58 to any successor in interest in land.
- (3) Allow a schedule and method of payment of impact fees in a manner different than provided in section 42-62, in a manner appropriate to the particular circumstances of the proposed development in lieu of the requirements for payment of the fees as set forth in this subsection, provided that security is posted or provided ensuring payment of the fees with interest, in a form acceptable to the city, which security may be in the form of a cash bond, irrevocable letter of credit, negotiable certificate of deposit or escrow account, surety bond, or lien or mortgage on lands to be covered by the building permit. The city manager may waive the security requirement for development agreements involving changes of use.

(b) Any agreement proposed by an applicant pursuant to this section shall be presented to and approved by the city commission prior to when the road impact fee is due pursuant to this division. Any such agreement shall provide for execution by any mortgagees, lienholders, or contract purchasers in addition to the landowner, and shall require the applicant to record such agreement in the public records of the county. The city commission shall approve such an agreement only if it finds that the agreement will apportion the burden of expenditure for new facilities in a just and equitable manner, consistent with applicable state law and case law and this division.

(Code 1988, § 11.5-27; Ord. No. 10-01, § I, 1-14-10)

Sec. 42-58. Credits.

(a) An applicant shall be entitled to a credit against the road impact fee assessed pursuant to this division in an amount equal to the cost of off-site improvements, including on-site arterial roads serving other developments, and the cost of improvements to on-site roads which create excess capacity for general public traffic or contributions of land, money or services for off-site improvements contributed or previously contributed by the applicant or his predecessor in interest as a condition of any development agreement entered into with the city. Such credit shall be based on the following criteria:

- (1) The actual cost or estimated cost of improvements, based on recent bid sheet information of the city or the county, of off-site related improvements by the applicant to the road system. Off-site improvements eligible for a credit are those improvements proposed for a building site which are required by the city to serve the building's external trips and general public traffic. Improvements not eligible for a credit are those necessary to serve internal trips or to provide safe and adequate ingress and egress, such as acceleration and deceleration lanes, turn lanes, traffic signals, paving of existing rights-of-way, or perimeter roads.
- (2) The actual cost or estimated cost of improvements based on recent bid sheet information of the city or the county with

- respect to that portion of on-site roads which create excess capacity for general public traffic.
- (3) The contribution of land, money or services by the applicant for off-site improvements to the road system and for improvements to on-site roads which create excess capacity for general public traffic. The credit for land contribution will be based on 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. If the city manager disagrees with the appraised value, the city may select and pay for another appraiser, and the credit 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 predecessors in title, no credit for contributions or donations made prior to the effective date of the ordinance from which this division derives shall be granted unless the cost of the improvements were paid for or the contributions were made within the two years prior to the effective date of the ordinance from which this division derives.
- (5) No credit shall exceed the amount of the road impact fee assessed under section 42-55, 42-56 or 42-57, unless specifically negotiated with the city commission.
- (6) Any credit issued shall take into account as an offset to the credit an amount equal to the impact fee imposed by section 42-55 multiplied by the number of permits issued on the effective date of the ordinance from which this division derives as if this division had been in effect at the time of issuance of such permits.
- (b) The amount of the credit shall be determined by the city manager; provided, however, the city manager's determination may be appealed to the city commission, whose decision shall be final and binding on the applicant.
- (c) Any credit issued pursuant to this section may be transferred by the applicant to any successor in interest of the property.
- (d) Road impact fee credits pertaining to property which credits are issued or exist pursuant to this Code may be transferred and applied, in whole or in part, to other property under the same ownership, if the city determines, that such transfer is necessary or appropriate to encourage the redevelopment of either the property from which or to which the credits are transferred in order to promote and enhance the physical, economic and societal environs on and surrounding either such property. Such transfer shall only be available and become effective if the city and property owner enter into a written agreement specifying the terms of such transfer. Transferred credits shall be treated the same as other credits under this section.
- (e) Previous development agreements wherein voluntary road impact fees were specified and paid shall be binding as to any building permit already issued on land subject to the development agreement.

(Code 1988, § 11.5-28; Ord. No. 15-30, § I, 4-9-15)

Sec. 42-59. Vested rights.

(a) It is not the intent of this division to abrogate, diminish or modify the rights of any persons that have vested rights pursuant to a valid governmental act of the city. An applicant may petition the city commission for a vested rights determination which would exempt the applicant from this division. Such petition shall be evaluated by the city attorney and a recommendation thereon submitted to the city commission based on the following criteria:

- (1) There exists a valid, unexpired governmental act of the city authorizing the building for which a building permit is sought.
- (2) Expenditures or obligations made or incurred in reliance upon the authorizing act are reasonably equivalent to the fee required by section 42-55.
- (3) It would be inequitable to deny the applicant the opportunity to complete a previ-

ously approved building under the conditions of the previous approval by requiring the applicant to comply with the requirements of this division. For the purposes of this subsection, the following factors shall be considered in determining whether it would be inequitable to deny the petitioner the opportunity to complete the previously approved development:

- a. Whether the injury suffered by the petitioner outweighs the public cost of allowing the development to go forward without payment of the fee required by this division;
- b. Whether the expenses or obligations were made or incurred subsequent to the effective date of Ordinance No. 89-68, after which date the adoption of this division (Ordinance No. 90-27) was pending; and
- c. Whether the operation of this division would create an onerous burden which would prevent the petitioner from making a reasonable return on his investment.

(b) If an applicant has previously entered into a development agreement with the city with conditions regarding off-site road system improvements, the applicant or his successor in interest may request a modification of the prior development agreement in order to bring the conditions into consistency with this division. Any request for such modification must be filed with the city manager within one year of the effective date of the ordinance from which this division derives.

(Code 1988, § 11.5-29)

Sec. 42-60. Applications and exemptions.

(a) The following improvements are required to pay road impact fees:

- (1) *New construction.* The constructions of all new buildings and additions to buildings (unless specially identified below as an exempt improvement).
- (2) *Changes of use.* In the case of a change of use, redevelopment or modification of an existing building, structure or other land

development activity, the impact fee shall be based upon the new increase in the impact fee for the new or proposed land development activity as compared to the existing or last previous land use or activity. Regarding increases in square footage, only the net additional square footage will be subject to additional road impact fees. All buildings constructed prior to the adoption of the city's initial road impact fee ordinance are exempt from this provision.

(3) *Demolition.* In the case of a demolition of an existing building or structure, the impact fee for future redevelopment shall be based upon the net increase in the impact fee for the new or proposed land development activity as compared to the land use or activity existing prior to demolition. Credit for the proper use shall not be transferable to another location.

(4) *Relocation of a building.* In the case of a relocation of a building or structure, an impact fee shall be assessed to the relocated building at its new location. Future redevelopment of the old location from which the building was removed will receive a credit against the impact fee assessed equal to the impact fee that would have been assessed against the relocated structure. Credits shall not be transferable to the new location.

(5) *Proof of occupancy.* In order to take advantage of subsection (2), (3) or (4) above and pay impact fees only for the net increase in development activity, the applicant shall provide reasonably sufficient evidence that the previous land use or activity was actually maintained on the site at any time during the five year period prior to the date of application for the new development approval. Such evidence may include proof of utility records, records for the use sought to be shown, or other documentation. Business Tax issuance is not of itself substantial proof.

(b) *Exempt improvements.* The following shall be exempt from payment of the road impact fee:

- (1) Those buildings that have received a building permit prior to the effective date of Ordinance No. 89-68, the Interim Road Impact Fee Ordinance.
- (2) Government owned and operated buildings used for general governmental purposes, including public schools.
- (3) Buildings owned by a fraternal, benevolent, charitable, eleemosynary, philanthropic, altruistic, civic, community, veteran, educational or other nonprofit organization.
- (4) Additions to or expansions of single-family residential buildings where the use is not changed from single-family usage.
- (5) The construction of accessory buildings or structures.
- (6) The replacement of a building, structure or residence with a similar building, structure or residence and with a similar land use.
- (7) Any building that serves the community interests for which the city commission deems the exemption from road impact fees is appropriate and serves a municipal purpose.

(c) *Historic downtown district area.* The city may waive any road impact fee required to be paid under this Code, or any portion thereof, if the city commission determines that:

- (1) Such waiver or partial waiver is necessary or appropriate to encourage the development or redevelopment of property situated within the bounds of the historic downtown district area, as described in section 98-188 of this Code, and that such development or redevelopment is necessary or desirable to enhance the safety, aesthetics, function, developability or character of the historic downtown district, encourage economic development, or eliminate or attenuate public health and environmental hazards; and

- (2) Specific architectural, design, landscaping, parking, lighting, and access standards or elements that advance one or more of the foregoing requirements are or shall be implemented as part of the proposed development or redevelopment.

In determining the percentage, if any, of the road impact fee to be waived, the city commission shall base such determination upon the extent to which the criteria set forth within the above (1) and (2) are met. Such waiver or partial waiver shall only be available and become effective if the city commission and property owner enter into a written agreement specifying the terms of such waiver.

This subsection 42-60(c) shall remain in effect for a period of two years beginning on the day that it takes effect, after which two-year period this subsection shall stand repealed unless otherwise provided by ordinance, but any waiver or partial waiver that is granted in accordance with this subsection and which is memorialized in a fully executed written agreement as required hereunder during such two-year period shall continue in effect and shall not be affected by the automatic repeal of this subsection.

(Code 1988, § 11.5-30; Ord. No. 98-89, § I, 12-10-98; Ord. No. 00-38, § II, 6-22-00; Ord. No. 10-01, § I, 1-14-10; Ord. No. 15-30, § II, 4-9-15; Ord. No. 15-51, § I, 6-25-15)

Sec. 42-61. Establishment of trust fund.

The road impact fees collected by the city pursuant to this division shall be kept separate from other general fund revenues of the city. Although the monies may be commingled in terms of investment strategies, there shall be one account established for each fee in order to provide a full cost accounting for the activity of each fee. Funds withdrawn from this account must be used solely in accordance with this division.

(Code 1988, § 11.5-31)

Sec. 42-62. Collection.

Except as provided for in section 42-57 or herein, the road impact fee shall be due and

payable at the earlier of: (i) prior to the issuance of certificate of occupancy for a residential structure; (ii) prior to issuance of building permit for tenant build out for an existing building; (iii) prior to the issuance of shell certificate of occupancy for new construction for nonresidential structure; and (iv) prior to the occupancy of or change in use of a building, structure and other improvement of land. If the road impact fee is paid in full prior to or at the time of issuance of the building permit, the applicant is entitled to a three percent cost reduction on the road impact fee; provided, however, such discount does not apply to impact fees paid at time of issuance of a building permit for tenant build out for an existing building.

(Code 1988, § 11.5-32; Ord. No. 10-01, § I, 1-14-10)

Sec. 42-63. Use.

(a) The funds collected because of establishment of the road impact fee in accordance with this division shall be used solely for the purpose of planning, acquisition, expansion and development of off-site improvements to the road system determined to be needed to offset the impacts of new development with the city, including but not limited to:

- (1) Corridor studies and environmental assessments.
- (2) Design and construction plan preparation.
- (3) Right-of-way acquisition, including legal fees.
- (4) Construction of new through lanes.
- (5) Construction of new turn lanes.
- (6) Construction of new bridges.
- (7) Construction of new drainage facilities in conjunction with new road construction.
- (8) Purchase and installation of traffic signalization.
- (9) Construction of new curbs, medians and shoulders.
- (10) Relocating utilities to accommodate new road construction.

(b) All funds shall be used exclusively within the city in a manner consistent with the principles set forth in state law and case law, and otherwise consistent with all requirements of the constitutions of the United States and the state. The funds shall not be used to maintain or repair any roads.

(c) Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. All income derived shall be deposited in the road impact fee account. Applicants shall not receive a credit for or be entitled to interest from the investment of funds except as provided in subsection (d) of this section.

(d) The fees collected pursuant to this division shall be returned to the then-present owner of the development if the fees have not been encumbered or spent by the end of the calendar quarter immediately following ten years from the date the fees were received, or if the development for which the fees were paid was never begun, in accordance with the following procedure:

- (1) The then-present owner must petition the city commission for the refund within one year following the end of the calendar quarter immediately following nine years from the date on which the fee was received.
- (2) The petition must be submitted to the city manager and must contain the following:
 - 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.

(Code 1988, § 11.5-33)

Sec. 42-64. Collection of past due fees; liens.

(a) If the road impact fee is not paid when due for any reason, including because of a mistake or inadvertence, the city shall proceed to collect the impact fee as provided in this section.