

- (2) Provide for a transfer of credits as provided for in section 42-104 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 42-100.

(b) Any agreement proposed by an applicant pursuant to this section shall be presented to and approved by the city commission prior to the issuance of a building permit. Any such agreement shall provide for execution by any mortgages, lien holders, or contract purchasers in addition to the landowner, and shall require the applicant to record such agreement in the public records of Orange 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 Florida Statutes and case law and this division.

(Code 1988, § 11.5-58; Ord. No. 98-87, § 8, 12-10-98)

Sec. 42-104. Credits.

(a) An applicant shall be entitled to a credit against the recreation impact fee charged pursuant to this division in an amount equal to the cost of off-site improvements and the cost of improvements to on-site recreation facilities which will take a burden off the off-site recreation facilities intended for general public recreational use or contributions of land, money or services 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 based on recent bid sheet information of the city of off-site related improvements by the applicant to the recreational 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 projects increased burden on the city's recreational facilities.

- (2) The contribution of land, money or other public facilities by the applicant for off-site improvements to the recreation system and for improvements to on-site recreational facilities which have the primary purpose of meeting the general public's need for recreational facilities as determined by the city as a result of the improvements. The credit for land contribution 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 credit shall be an amount equal to the average of the two appraisals.

- (3) 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 this division 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 this division.
- (4) No credit shall exceed the amount of the recreation impact fee assessed under sections 42-100, 42-101 or 42-103 above.
- (5) This recreation impact fee is applicable to and for the public facilities for general public recreational use which are a result of new development. No recreation impact fee credit or reduction shall be allowed for private recreational facilities, including land contributions, with only an indirect benefit to the general public.

(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) Previous development agreements wherein voluntary recreation 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, § 11.5-59; Ord. No. 98-87, § 9, 12-10-98)

Sec. 42-105. 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 the provisions of 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 certificate of occupancy is sought.
- (2) Expenditures or obligations made or incurred in reliance upon the authorizing act are reasonably equivalent to the fee required by section 42-100.
- (3) That it would be inequitable to deny the applicant the opportunity to build a previously approved building under the conditions of the previous approval by requiring the applicant to comply with the requirements of the division.

(b) If an applicant has previously entered into a development agreement with the city with conditions regarding recreational facility 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 this division [December 10, 1998].

(Code 1988, § 11.5-60; Ord. No. 98-87, § 10, 12-10-98)

Sec. 42-106. Exemptions.

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

- (1) Those buildings which have been issued a building permit prior to the effective date of Ordinance 90-26, the "Recreation Impact Fee Ordinance."
- (2) Publicly 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 a single family residential building where the use is not changed.
- (5) The construction of accessory buildings or structures.
- (6) The replacement of a building or structure with a new building or structure.

(Code 1988, § 11.5-61; Ord. No. 98-87, § 11, 12-10-98)

Sec. 42-107. Establishment of fund.

The recreation impact fees 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. (Code 1988, § 11.5-62; Ord. No. 98-87, § 12, 12-10-98)

Sec. 42-108. Use.

(a) The funds collected by reason of establishment of the recreation impact fee in accordance with this division shall be used solely for the purpose of planning, acquisition, expansion and development of recreational facility improve-

ments determined to be needed to provide recreational services for new development with the city, including, but not limited to:

- (1) Recreation studies and environmental assessments.
- (2) Design and construction plan preparation.
- (3) Land acquisition, including legal fees.
- (4) Construction of new parks.
- (5) Purchase and installation of recreational fixtures.

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

(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 recreation 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) below.

(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, § 11.5-63; Ord. No. 98-87, § 13, 12-10-98)

Sec. 42-109. Collections when building permit 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 dwelling unit 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 Orange 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 of the impact fee statement notice, or if a hearing is not requested pursuant to subsection (b) 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 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 (b) above. In the event a hearing is requested pursuant to section (b) above, 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 judgements 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 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. sections 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 impact fees imposed hereunder shall remain liens, co-equal 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.

(Code 1988, § 11.5-64; Ord. No. 98-87, § 14, 12-10-98)

Sec. 42-110. Penalty.

Violations of this division shall constitute a misdemeanor enforceable in accordance with section 1-4 of this Code 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, § 11.5-65; Ord. No. 98-87, § 15, 12-10-98)

Sec. 42-111. Adoption of background studies.

The city commission adopts by reference the March, 2004, study entitled "Municipal Services Impact Fee Study" and any exhibits or memoranda to that study, particularly as it relates to the allocation of a fair share of the costs of new and expanded recreational facilities needed to serve new development in the city.

(Code 1988, § 11.5-67; Ord. No. 98-87, § 17, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

Secs. 42-112—42-140. Reserved.

DIVISION 4. POLICE IMPACT FEE

Sec. 42-141. Short title and authority.

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

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

(Code 1988, § 11.5-81; Ord. No. 98-85, § 2, 12-10-98; Ord. No. 04-17, § 1, 8-12-04)

Sec. 42-142. 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 police 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 42-145.

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 42-145.

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 police 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, § 11.5-85; Ord. No. 98-85, § 1, 12-10-98)

Cross reference—Definitions generally, § 1-2.

Sec. 42-143. 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 police protection for 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 police protection for new development.

(e) This division supersedes Ord. No. 92-02. (Code 1988, § 11.5-82; Ord. No. 98-85, § 3, 12-10-98)

Sec. 42-144. Fee imposed; time of payment.

Any person who, after the effective date of this division, seeks to develop land by applying for the issuance of a building permit for any residential or nonresidential structure, as defined in section 42-145 herein, shall be required to pay a police 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 police impact fee hereby required has been paid.

(Code 1988, § 11.5-83; Ord. No. 98-85, § 4, 12-10-98)

Sec. 42-145. Fee schedule.

(a) The following police impact fees are 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 or nonresidential use, 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	\$339.00
(2)	Nonresidential, per square foot	\$0.65

(b) The fees imposed for residential and non-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 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, § 11.5-84; Ord. No. 98-85, § 5, 12-10-98; Ord. No. 04-17, § 1, 8-12-04; Ord. No. 15-11, § III, 1-22-15)

Sec. 42-146. 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 police impact fee as appropriate. (Code 1988, § 11.5-86; Ord. No. 98-85, § 6, 12-10-98)

Sec. 42-147. Reductions for offsetting contributions.

(a) An applicant shall be entitled to a reduction against the police impact fee charged pursuant to this division in an amount equal to the cost of improvements for police 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 onsite improvements which create excess capacity for the general public.
- (3) The contribution of land, money, facilities, equipment or other public facilities by the applicant for improvements to the city's police 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 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 police impact fee charged under section 42-144 above.
- (6) No impact fee reduction shall be allowed for private security measures or improvements with only an indirect benefit for police protection to the general public.

(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, § 11.5-87; Ord. No. 98-85, § 7, 12-10-98)

Sec. 42-148. Exemptions.

The following shall be exempt from payment of the police 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, § 11.5-88; Ord. No. 98-85, § 8, 12-10-98)

Sec. 42-149. Establishment of fund.

The police 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, § 11.5-89; Ord. No. 98-85, § 9, 12-10-98)

Sec. 42-150. Use.

(a) The funds collected by reason of establishment of the police 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 police 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 con-

stitutions of the United States and the State of Florida. Said funds shall not be used to maintain or repair existing police 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 police 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, § 11.5-90; Ord. No. 98-85, § 10, 12-10-98)