

ORDINANCE 10-01

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 42-55 OF THE CITY'S CODE OF ORDINANCE ENTITLED "ROAD IMPACT FEE SCHEDULE" BY REPLACING EXHIBIT "A" WITH NEW TABLES TO REDUCE THE ROAD IMPACT FEE, ELIMINATING THE ANNUAL INFLATION INCREASE TO THE ROAD IMPACT FEE AND MAKING ROAD IMPACT FEE DUE PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY; AMENDING SECTION 42-54 ENTITLED "LIMITATION ON ISSUANCE OF BUILDING PERMIT" AND SECTION 42-62 ENTITLED "COLLECTION" OF THE CITY'S CODE OF ORDINANCE TO REQUIRE PAYMENT OF ROAD IMPACT FEE PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY AND TO PROVIDE A DISCOUNT FOR PAYMENT OF IMPACT FEES AT TIME OF ISSUANCE OF BUILDING PERMIT; AMENDING SECTION 42-57 ENTITLED "DEVELOPMENT AGREEMENTS" TO INCLUDE INTEREST FOR DEFERRED PAYMENT AND TO WAIVE SECURITY REQUIREMENTS FOR CERTAIN CHANGES OF USE; AMENDING SECTION 42-60 ENTITLED "APPLICATIONS AND EXEMPTIONS" AND SECTION 42-64 ENTITLED "COLLECTION OF FEES WHEN BUILDING PERMIT ISSUED BY MISTAKE OR INADVERTENCE; LIENS" OF THE CITY'S CODE OF ORDINANCE TO "COLLECTION OF PAST DUE FEES; LIENS" AND TO REMOVE INCONSISTENCIES REGARDING THE COLLECTION OF ROAD IMPACT FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 26, 2006, the City Commission approved Ordinance 06-39 which increased the Road Impact Fees for new and expanding development in the City of Winter Garden, and

WHEREAS, since the adoption of Ordinance 06-39, new development has been hindered by economic constraints, and

WHEREAS, the City desires to temporarily eliminate the annual inflation increase to the road impact fee, and

WHEREAS, the City desires to implement provisions to reduce to the upfront cost of development by requiring the payment of road impact fees at the issuance of Certificate of Occupancy, allowing payment schedules for changes of use, and allowing cost reductions for road impact fees if paid prior to or at the issuance of the building permit, and

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section I The City of Winter Garden hereby amends the following sections of Chapter 42, Finance, of the Code of Ordinances as follows:

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, ~~no any~~ building permit ~~shall be~~ issued is issued subject to unless and until the required road impact fee ~~has been being~~ paid when due under this division.

Section 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) CR 545 Special Benefit Overlay District - In addition to the road impact fees identified above, all new developing property located within the CR 545 Special Benefit Overlay District as identified in Exhibit "B", Map of the CR545 Special Benefit Overlay Area, shall be required to pay an additional road impact fee on or prior to the issuance of certificate of occupancy in accordance with the schedule set forth as identified in Exhibit "C", Traffic Impact Fee Rates for the CR 545 Benefit Overlay Area. This fee will automatically end on October 1, 2021 without any additional Commission action.

(c) 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.

Sec. 42-57. Development agreements.

(a) ~~An applicant~~ The City may enter into a development agreement with ~~the City 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 ~~the issuance of~~. 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.

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:

~~(61)~~ Those buildings that have received a building permit prior to the effective date of Ordinance No. 89-68, the Interim Road Impact Fee Ordinance.

~~(72)~~ Publicly Government owned and operated buildings used for general governmental purposes, including public schools.

(83) Buildings owned by a fraternal, benevolent, charitable, eleemosynary, philanthropic, altruistic, civic, community, veteran, educational or other nonprofit organization.

(94) Additions to or expansions of single-family residential buildings where the use is not changed from single-family usage.

(105) The construction of accessory buildings or structures.

(116) The replacement of a building, structure or residence with a similar building, structure or residence and with a similar land use.

(127) Any building that serves the community interests for which the City Commission ~~feels~~ deems the exemption from road impact fees is appropriate and serves a municipal purpose.

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 non-residential 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 3% 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.

Sec. 42-64. Collection of past due fees ~~when building permit issued by mistake or inadvertence~~; liens.

(a) If the road impact fee is not paid ~~prior to the issuance of~~ 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.

(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 making 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 file record a claim of lien ~~with the Clerk of the Circuit Court in and for the in the official public records of the~~ County.

(6) Upon mailing of the notice of lien, the City Attorney shall file cause the recording of a claim of lien ~~with the Clerk of the Circuit Court in and for in the official public records of 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 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.

Section II The impact fee schedule Exhibit "A" of Ordinance 06-39 and is hereby repealed and replaced by the Traffic Impact Fee Rates, Exhibit "A", attached hereto.

Section III All Ordinances and parts of Ordinances in conflict herewith are hereby repealed. The existing Ordinances of the City provide for accounting and reporting of impact fee collections and expenditures, and to the extent such requirements are required in this Ordinance, this Section requires such. Further, there are no administrative charges for the collection of road impact fees in the City, but if any are imposed, such shall be limited to actual costs of administration.

Section IV That Section I of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections and exhibits of this Ordinance may be renumbered or relettered to accomplish such intention, including to be consistent with the changes and intent of Ordinance 10-01, if adopted; the word "Ordinance" may be changed to "Section", "Article", or other appropriate word.

Section V This Ordinance shall become effective upon approval by the City Commission.

FIRST READING AND PUBLIC HEARING: December 10 2009.

SECOND READING AND PUBLIC HEARING: January 14 2010.

APPROVED:

/S/
JOHN REES, Mayor/Commissioner

ATTEST:

/S/
KATHY GOLDEN, City Clerk

Exhibit "A"

ORDINANCE 10-01

Land Use	Unit	ERU	Fee
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
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.