

SECTION 12. IMPACT FEES

~~Impact fees to pay for city infrastructure needs created by development are required to be paid specific to uses anticipated for the property and the procedures established by the City Council. These impact fees and the manner in which they are collected and utilized may be established by the City Council and such fees may be adjusted by the City Council at intervals, as changing circumstances warrant.~~

A. Short Title and Applicability

- (1) *This section may be known and cited as Conway's "Impact Fee Ordinance," and is referred to herein as "this section."*
- (2) *The provisions of this section shall apply to all of the territory within the corporate limits of the City of Conway.*

B. Intent

- (1) *The intent of this section is to ensure that impact-generating development bears a proportionate share of the cost of improvements to the City's major roadway and park systems; to ensure that the proportionate share does not exceed the cost of providing major roadways and parks; and to ensure that funds collected from impact-generating development are actually used to construct major roadway or park system improvements that serve new development. It is further the intent of this section to use road and park impact fees to implement the City's Growth Plan and Master Street Plan.*
- (2) *It is not the intent of this section to collect any money from any impact-generating development in excess of the actual amount necessary to offset demands generated by that development for major roadway or park system improvements for which the fee was paid.*

C. Findings

The City Council of Conway, Arkansas, finds that:

- (1) *The protection of the health, safety, and general welfare of the citizens of the City requires that the roads and parks of the City be expanded and improved to meet the demands of new development.*
- (2) *The creation of an equitable impact fee system would enable the City to impose a more proportionate share of the costs of required improvements to the major roadway and park systems on those developments that create the need.*

- (3) *The impact fee study sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City's major roadway and park systems.*
- (4) *The road and park impact fees described in this section are based on the impact fee study, and do not exceed the capital costs required to serve the development that will pay the fees.*
- (5) *The types of improvements to the major roadway and park systems considered in the impact fee study will benefit all impact-generating development, and it is therefore appropriate to treat the City as a single service area for purposes of calculating, collecting, and spending the impact fees for each type of facility.*
- (6) *There is both a rational nexus and a rough proportionality between the development impacts created by each type of new development covered by this section and the road and park impact fees that such development will be required to pay.*
- (7) *This section creates a system by which impact fees paid by impact-generating development will be used to expand the major roadway and park systems, so that the development that pays each fee will receive a corresponding benefit within a reasonable period of time after the fee is paid.*
- (8) *The impact fees are calculated in the impact fee study based on the existing level of service for road and park facilities. For roads, the level of service is defined as the system-wide ratio of capacity to demand in the major road system, and the fees are based on a one-to-one ratio, even though the existing system provides significantly more capacity than existing demand. For parks, the level of service is based on the ratio of the replacement value of existing parkland and improvements to the existing number of equivalent dwelling units.*

D. Definitions

For the purpose of interpreting this section, certain words used herein are defined as follows:

Applicant: The applicant for a building permit for which an impact fee is due pursuant to the provisions of this section.

Equivalent Dwelling Units (EDUs): Represents the impact of a typical single-family dwelling on the park system. A typical single-family unit represents, on average, one EDU. Other types of units each represent a fraction of an EDU, based on their relative average household sizes.

Growth Plan: The Comprehensive Development Plan for the City which has been officially adopted by the City Council to provide long-range development policies for the area subject to urbanization in the foreseeable future and which includes, among other things, the plan for land use, land subdivision, zoning, and traffic circulation.

Impact Fee Administrator: The City of Conway employee primarily responsible for administering the provisions of this section, or his or her designee.

Impact Fees: The road impact fee and the park impact fee.

Impact Fee Study: The Road and Park Impact Fee Study prepared for the City of Conway by Duncan Associates in April 2003, or a subsequent similar report.

Impact-Generating Development: Any land development designed or intended to permit a use of the land that will increase the number of service units.

Impact-Generating Development, Commencement of: Occurs upon the approval of an application for rezoning, subdivision, building permit, certificate of occupancy or similar application for new construction, whichever occurs first after the effective date of this section.

Major Roadway System: Arterials and collectors, including state roads but excluding Interstate 40, located within the City's incorporated area and identified on the City's Master Street Plan.

Major Roadway System Improvements: Improvements that expand the capacity of the major roadway system, including but not limited to the construction of new roads, the widening of existing roads, intersection improvements, and installation of traffic signals. Acquisition of land or right-of-way shall not be considered a system improvement. Lane reconstruction, sidewalk construction, medians, landscaping, street lighting and other ancillary components of a capacity-expanding road improvement shall not be considered system improvements when not an integral part of a capacity-expanding improvement.

Park System: Park land, facilities and improvements to City-owned or maintained land used for active recreational purposes and associated recreational facilities, and recreational facilities and improvements made or installed by the City on non-City property and available for public use.

Park System Improvements: Capital improvements that result in a net expansion of the park land or recreational facilities that are available to the public. Remodeling, replacement or maintenance of existing equipment or facilities does not constitute a park system improvement.

Person: An individual, corporation, governmental agency or body, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.

Service Units: Vehicle-Miles of Travel and Equivalent Dwelling Units.

Vehicle-Miles of Capacity (VMC): The product of the maximum number of vehicles that can be accommodated on a roadway at Level of Service "D" during a week day and the length of the roadway in miles.

Vehicle-Miles of Travel (VMT): The product of the number of vehicles traveling during a weekday and the distance in miles that those vehicles travel.

E. Time of Fee Obligation and Payment

- (1) On and after the effective date of this section, any person who causes the commencement of impact-generating development shall be obligated at that time to pay a road and park impact fee, pursuant to the terms of this section. The obligation to pay the impact fees shall run with the land.*
- (2) The fee shall be determined and paid prior to the final inspection and issuance of the certificate of occupancy. The applicant for the building permit shall be responsible for paying the fee.*

F. Exemptions

The following shall be exempt from the terms of this section. An exemption must be claimed at the time of application for a building permit.

- (1) Alterations of an existing dwelling unit where no additional dwelling units are created.*
- (2) ~~Replacement of a destroyed, partially destroyed or moved residential building or structure with a new building or structure of the same use, and with the same number of dwelling units.~~ Replacement of a destroyed or partially-destroyed residential building or structure with a new building or structure of the same use, and with the same number of dwelling units. (O-04-31)*
- (2A) A residential building that is moved from within the City of Conway to another site within the City of Conway and that continues to be utilized for residential use.*
- (3) ~~Replacement of destroyed, partially destroyed or moved nonresidential building or structure with a new building or structure of the same gross floor area and use.~~ Replacement of destroyed or partially-destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use. (O-04-31)*

- (3A) *A nonresidential building that is moved from within the City of Conway to another site within the City of Conway providing the use remains the same. Any change in use that increases potential traffic generation and/or increase in floor area of this moved nonresidential building are subject to impact fees. (O-04-31)*
- (4) *Any development for which a completed application for a building permit was submitted prior to the effective date of this section or for which a site plan review has been approved, provided that the construction proceeds according to the provisions of the permit or review and the permit or review does not expire prior to the completion of the construction.*
- (5) *The impact fee administrator shall determine the validity of any claim for exemption pursuant to the criteria set forth in this section.*
- (6) *In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the City Council may agree to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the City that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the City Council and shall be made pursuant to goals and objectives articulated by the City Council.*
- (7) *Impact fees shall not be collected in the area which legal description is as follows:*

A tract of land that includes all of Sections 18 and 20, T-5-N, R-13-W, and parts of Section 7, 8, 17, 19, 21 and 30, T-5-N, R-13-W and parts of Sections 12 and 13, T-5-N, R-14-W the boundary of said tract is described as follows:

Beginning at the Northwest corner of said Section 18, T-5-N, R-13-W; thence South along the West line of said Section 18 to the south line of Con-Ark Subdivision; thence westerly along the south line and the extension of the south line of Con-Ark Subdivision to the centerline of South German Lane; thence southerly along the centerline of South German Lane to the centerline of Dave Ward Drive; thence easterly along the centerline of Dave Ward Drive to the West line of said Section 18; thence south along the West line of said Section 18 to the Northwest corner of said Section 19; thence South along the West line of said Section 19 to the centerline of Stanley Russ Road; thence easterly along the centerline of Stanley Russ Road to the East line of the SW 1/4, SW 1/4 of said Section 19; thence South along the said East line SW 1/4, SW 1/4, Section 19 to the Northeast corner NW 1/4, NW 1/4 of said Section 30; thence South along the East line of said NW 1/4, NW 1/4, Section 30 to the Southeast corner of said NW 1/4, NW 1/4 Section 30; thence West 466.15 feet along the South line of said NW 1/4, NW 1/4 Section 30; then South 2216.34 feet to a point 461.63 feet west of the west line the NE1/4, SW1/4 of said Section 30; thence easterly to a point on the West line of the NE1/4, SE1/4 of said Section 30, said point

being 430 feet north of the southwest corner of said NE1/4, SE1/4 Section 30; thence South, 430 feet along said West line NE1/4, SE1/4 Section 30 to the Southwest corner of said NE1/4, SE1/4, Section 30; thence east along said South line NE1/4, SE1/4 Section 30 to the East line of said Section 30; thence North along said East line Section 30 to the Southwest corner of said Section 20; then easterly along the South line of said Section 20 to the Southwest corner of said Section 21; thence North along the West line of said Section 21 to the ordinary high water line of Lake Conway; thence northeasterly along the said ordinary high water line of Lake Conway to the centerline of Amity Road; thence southeasterly along the centerline of Amity Road to the East line NW1/4, SW1/4 Section 21; thence North along said East line NW1/4, SW1/4 Section 21 and the W1/2, NW1/4 Section 21 to the North line of said Section 21; thence West along the North line of said Section 21 and Section 20 to the East line of the W1/2, SE1/4 of said Section 17; thence North along said East line W1/2, SE1/4 Section 17 to the North line of the said W1/2, SE1/4 Section 17; thence West along said North line W1/2, SE1/4 Section 17 to the East line of the NW1/4 of said Section 17; thence North along said East line NW1/4 Section 17 to the North line of said Section 17; thence west along said North line Section 17 to the centerline of Interstate 40; thence northerly along said centerline of Interstate 40 to a point on the North line SW1/4 of said Section 8; thence westerly along the North line of said SW1/4 of said Section 8 and North line S1/2 of said Section 7 to the northerly extension of the East line of the West 200 feet of Lot 3 Allinder Addition; thence South along said East line of West 200 feet of Lot 3 Allinder Addition to the South line of Lot 3 Allinder Addition; thence West along the South line of Lot 3 and Lot 4 Allinder Addition and westerly extension of said South line to the centerline of Harkrider Avenue; thence South along the centerline at Harkrider Avenue to the easterly extension of the centerline of McKay Avenue; thence West along the extended centerline of McKay Avenue and centerline of McKay Avenue to the centerline of Griffith Street; thence South along the centerline of Griffith Street to the South line of said Section 12, T-5-N, R-14-W; thence East along the South line of said Section 12 to the Northwest corner of said Section 18 and the Point of Beginning. (Ordinance O-04-106)

nor in an area with the boundaries described as follows: Beginning at the corner of the intersection of Harkrider Street (U.S. Highway 65B) and Garland Street proceed west along Garland Street to Markham Street, south to Smith Street, west to Spencer Street, north to Mill Street, west along Mill Street to the railroad, southeasterly along the railroad to Prince Street extended, west to Locust Street, south and southeasterly along Locust Street to College Avenue, northeasterly along College Avenue to the railroad, southeasterly along the railroad to Bruce Street, east to Harkrider Street and northwesterly and north along Harkrider Street to the point of beginning. No impact fee funds collected shall be expected on capital improvements located in the exempt areas. (Ordinance O-04-115)

(8) No waivers shall be granted for any required impact fees.

G. Fee Determination

(1) Any person who applies for a building permit for an impact-generating development, except those exempted or preparing an independent fee calculation study, shall pay a road and park impact fee in accordance with the following fee schedule prior to the final inspection and issuance of a certificate of occupancy. If any credit is due pursuant to subsection K, the amount of such credit shall be deducted from the amount of the fee to be paid.

Land Use Type	Unit	Roads	Parks	Total
Single-Family (up to 1,000 sq. ft.)	Dwelling	\$787	\$469	\$1,256
Single-Family (1,001 to 1,250 sq. ft.)	Dwelling	\$870	\$531	\$1,401
Single-Family (1,251 to 1,500 sq. ft.)	Dwelling	\$937	\$582	\$1,519
Single-Family (1,501 to 1,750 sq. ft.)	Dwelling	\$992	\$623	\$1,615
Single-Family (1,751 to 2,000 sq. ft.)	Dwelling	\$1,039	\$659	\$1,698
Single-Family (2,001 to 2,250 sq. ft.)	Dwelling	\$1,080	\$690	\$1,770
Single-Family (2,251 to 2,500 sq. ft.)	Dwelling	\$1,117	\$718	\$1,835
Single-Family (2,501 to 3,000 sq. ft.)	Dwelling	\$1,165	\$755	\$1,920
Single-Family (3,001 to 3,500 sq. ft.)	Dwelling	\$1,221	\$797	\$2,018
Single-Family (3,501 to 4,000 sq. ft.)	Dwelling	\$1,268	\$832	\$2,100
Single-Family (4,001 to 4,500 sq. ft.)	Dwelling	\$1,309	\$864	\$2,173
Single-Family (4,501 to 5,000 sq. ft.)	Dwelling	\$1,346	\$891	\$2,237
Single-Family (more than 5,000 sq. ft.)	Dwelling	\$1,379	\$916	\$2,295
Multi-Family	Dwelling	\$771	\$447	\$1,218
Mobile Home/RV Park	Pad	\$558	\$556	\$1,114
Hotel/Motel	Room	\$1,048	na	\$1,048
Retail/Commercial				
Shopping Center/General Retail	1000 sq. ft.	\$1,915	na	\$1,915
Auto Sales/Service	1000 sq. ft.	\$1,779	na	\$1,779
Bank	1000 sq. ft.	\$1,496	na	\$1,496
Convenience Store w/Gas Sales	1000 sq. ft.	\$4,181	na	\$4,181
Golf Course	Hole	\$2,278	na	\$2,278
Health Club	1000 sq. ft.	\$1,603	na	\$1,603
Movie Theater	1000 sq. ft.	\$2,342 ¹	na	\$2,342 ¹
Restaurant, Sit-Down	1000 sq. ft.	\$2,421	na	\$2,421
Restaurant, Fast Food	1000 sq. ft.	\$5,270	na	\$5,270
Office/Institutional				
Office, General	1000 sq. ft.	\$1,280	na	\$1,280
Office, Medical	1000 sq. ft.	\$3,839	na	\$3,839
Hospital	1000 sq. ft.	\$1,782	na	\$1,782
Nursing Home	1000 sq. ft.	\$499	na	\$499
Church	1000 sq. ft.	\$737	na	\$737
Day Care Center	1000 sq. ft.	\$1,536	na	\$1,536
Elementary/Sec. School	1000 sq. ft.	\$241	na	\$241
Industrial				
Industrial Park	1000 sq. ft.	\$808	na	\$808
Warehouse	1000 sq. ft.	\$576	na	\$576
Mini-Warehouse	1000 sq. ft.	\$200	na	\$200
Vehicle Fueling Station (Not at the time of construction of a convenience store) (Ord. O-03-162)	Fueling Station (each point of fuel transaction)	\$952	na	\$952

¹Amended by Ordinance O-09-114 from \$4,976 to \$2,342.

- (2) *If the type of impact-generating development for which a building permit is requested is not specified on the above schedule, the impact fee administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. In the case of road impact fees, the impact fee administrator shall be guided in the selection of a comparable type of land use by trip generation rates contained in the most current edition of the report titled Trip Generation, prepared by the Institute of Transportation Engineers (ITE), or articles or reports appearing in the ITE Journal.*
- (3) *In many instances, a particular structure may include auxiliary uses associated with the primary land use. For example, in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. The impact fees generally are assessed based on the primary land use. If the applicant can document that a secondary land use accounts for over 25% of the gross floor area of the structure, and that the secondary use is not assumed in the trip generation or other impact data for the primary use, then the impact fees may be assessed based on the disaggregated square footage of the primary and secondary land use. Even when located within shopping centers, fast-food restaurants and service stations (convenience stores with gasoline sales) shall be considered primary uses.*
- (4) *If the type of impact-generating development for which a building permit is requested is for a change of land use type or for the expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the fee for the new land use type as compared to the previous land use type.*
- (5) *In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.*

H. Independent Fee Calculation

- (1) *The impact fee may be computed by the use of an independent fee calculation study at the election of the applicant, or upon the request of the impact fee administrator, for any proposed land development activity interpreted as not one of those types listed on the fee schedule or as one that is not comparable to any land use on the fee schedule, and for any proposed land development activity for which the impact fee administrator concludes the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.*

- (2) *The preparation of the independent fee calculation study shall be the sole responsibility and cost of the party electing to utilize the study.*
- (3) *Any person who requests to perform an independent fee calculation study shall pay an application fee for administrative costs associated with the review and decision on such study.*
- (4) *The independent fee calculation study shall be based on the same formulas, level of service standards and unit costs for facilities used in the impact fee study, and shall document the methodologies and assumptions used.*
- (5) *The road impact fees shall be calculated according to the following formula.*

FEE = PROJECT VMT x NET COST/VMT

Where:

PROJECT VMT = TRIPS x % NEW x LENGTH ÷ 2

TRIPS = Daily trip ends generated by the development during the work week

% NEW = Percent of trips that are primary, as opposed to passby or diverted-link trips

LENGTH = Average length of a trip on major road system

÷ 2 = Avoids double-counting trips for origin and destination

NET COST/VMT = COST/VMT - CREDIT/VMT

COST/VMT = COST/VMC x VMC/VMT

COST/VMC = Average cost to create a new VMC based on historical or planned projects

VMC/VMT = The system-wide ratio of capacity to demand in the major roadway system

CREDIT/VMT = Credit per VMT, based on revenues to be generated by new development

- (6) *The park impact fees shall be calculated according to the following formula.*

$FEE = PROJECT\ EDUs \times NET\ COST/EDU$ <p>Where:</p> $PROJECT\ EDUs = UNITS \times EDUs/UNIT$ $UNITS = \text{Number of dwelling units of a given housing type}$ $EDUs/UNIT = \text{Number of EDUs represented by one dwelling unit of a given housing type}$ $NET\ COST/EDU = COST/EDU - CREDIT/EDU$ $COST/EDU = \text{Ratio of total replacement cost of existing park land and improvements to existing EDUs}$ $CREDIT/EDU = \text{Credit per EDU, based on revenues to be generated by new development}$

- (7) *An independent fee calculation study submitted for the purpose of calculating a road impact fee may be based on data, information or assumptions from independent sources, provided that:*
- a. *The independent source is an accepted standard source of transportation engineering or planning data; or*
 - b. *The independent source is a local study on trip characteristics carried out by a qualified transportation planner or engineer pursuant to an accepted methodology of transportation planning or engineering.*

I. Use of Fees

- (1) *An impact fee fund that is distinct from the general fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the impact fee fund:*
- a. *Road Impact Fee Account; and*
 - b. *Park Impact Fee Account.*
- (2) *The road impact fee account shall contain only those road impact fees collected pursuant to this section plus any interest which may accrue from time to time on such amounts.*

- (3) *The park impact fee account shall contain only those park impact fees collected pursuant to this section plus any interest which may accrue from time to time on such amounts.*
- (4) *Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.*
- (5) *The monies in each impact fee account shall be used only for the following:*
 - a. *To acquire or construct system improvements of the type reflected in the title of the account;*
 - b. *To pay debt service on any portion of any current or future general obligation bond or revenue bond issued after the effective date of this section and used to finance major roadway or park system improvements of the type reflected in the title of the account;*
 - c. *As described in subsection J, Refunds;*
 - d. *As described in subsection K, Credits; or*
 - e. *As described in subsection L(4) relating to the costs of administering this section.*
- (6) *The monies in each impact fee account shall not be used for the following:*
 - a. *Rehabilitation, reconstruction, replacement or maintenance of existing facilities except to the extent that the projects increase the capacity to serve new development;*
 - b. *Ongoing operational costs; or*
 - c. *Debt service for any past general obligation bond or revenue bond issued prior to the effective date of this section, or any portion of any current or future bond issued after the effective date of this section and not used to finance major roadway or park system improvements of the type reflected in the title of the account.*

J. Refunds

- (1) *Any monies in the impact fee fund that have not been spent within seven (7) years after the date on which such fee was paid shall be returned to the current owners with earned interest since the date of payment.*
 - a. *Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within thirty (30) days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.*
 - b. *The refund shall be made on a pro rata basis, and shall be paid in full within ninety (90) days of the date certain upon which the refund becomes due.*
- (2) *If an applicant has paid an impact fee required by this section and the building permit later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then the applicant who paid such fee shall be entitled to a refund of the fee paid, without interest. In order to be eligible to receive such refund, the applicant who paid such fee shall be required to submit an application for such refund within thirty (30) days after the expiration of the permit or extension for which the fee was paid.*
- (3) *At the time of payment of any impact fee under this section, the impact fee administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this section.*

K. Credits

- (1) *Credit against the road and park impact fees shall be provided for contributions toward the cost of major roadway and park system improvements.*
 - a. *Approved credits for the major roadway and park system improvements shall generally become effective when the improvements have been completed and have been accepted by the City Council under the provisions of a prior agreement. All impact fee credits shall have a reading at one regularly scheduled City Council meeting prior to its passage and approval at any subsequent regularly scheduled City Council meeting. (Ordinance O-04-38)*

- b. *No credit will be applied to the road impact fee for dedication of right-of-way, since no right-of-way costs were included in the calculation of the road impact fee. No credit will be applied to the road impact fee for improvements to the major roadway system that primarily serve traffic generated by the applicant's project, such as acceleration/deceleration lanes into and out of the project.*
 - c. *Credit for park land dedication shall be based on the value of the land to be dedicated. The value of any land required to be dedicated shall be based upon the "fair market value" of the land at the time of filing the final plat. The value shall be determined by a certified appraiser who is selected and paid for by the applicant, and who uses generally accepted appraisal techniques. If the City disagrees with the appraised value, the City may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being borne by the party rejecting the average. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties. Approved credits for dedicated park land shall become effective when the land has been conveyed to the City and has been accepted by the City.*
- (2) *In order to receive credit for major roadway and park system improvements, the developer shall submit complete engineering drawings, specifications, and construction cost estimates to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the impact fee administrator.*
- (3) *To qualify for an impact fee credit, the developer must enter into an agreement with the City as approved by the City Council. The developer agreement shall specify the following:*
- a. *The amount of the credit;*

- b. *How the credit will be allocated within the development; and*
 - c. *Whether and how the developer will be reimbursed for any excess credit beyond the impact fees that would otherwise be due from the development.*
- (4) *Unless otherwise specified in a developer agreement, in the event that the impact-generating development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first.*
- (5) *The right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the improvement was made. Credits issued for a particular development shall not be transferable to another development.*
- (6) *Credits provided pursuant to this section shall be valid from the effective date of such credits until ten (10) years after such date or until the last date of construction within the development or project for which the credits were issued, whichever occurs first.*
- (7) *Applicants may also obtain credits for major roadway and park system improvements completed prior to the effective date of this section, and may use such credits to reduce the impact fees due after the effective date of this section for major roadway and park system improvements within the same impact-generating development for which the credits were issued. Application for such credits must be made, on forms provided by the City, within two (2) years after the effective date of this section. In the event that the impact-generating development for which the credits are claimed is partially completed, the amount of the credits shall be reduced by the amount of the impact fees for major roadway and park system improvements that would have been charged for the completed portion of the development had this section been in effect. In the event that the impact-generating development project has been fully completed, no credits shall be issued. (Ordinance O-04-38)*

L. Miscellaneous Provisions

- (1) *Nothing in this section shall restrict the City from requiring the construction of reasonable project improvements required to serve the development project, whether or not such improvement are of a type for which credits are available under subsection K, Credits.*
- (2) *The impact fee administrator shall maintain accurate records of the impact fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the City deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice.*
- (3) *Upon request by the City Council, the impact fee administrator shall present to the City Council a proposed capital improvements program that shall assign monies from each impact fee fund to specific projects and related expenses for eligible improvements of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to subsection J, Refunds, or subsection K, Credits, or subsection L(4) below shall be retained in the same impact fee fund until the next fiscal year.*
- (4) *The City shall be entitled to retain not more than two percent (2%) of each impact fee collected as payment for the expenses of collecting the fee and administering this section. In the case of refunds of impact fees under subsection J, Refunds, the City shall be entitled to retain not more than an additional two percent (2%) of the impact fee payment made by the applicant as payment for the expenses of processing the reimbursement request.*
- (5) *If a impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated.*
 - a. *Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such overpayment.*
 - b. *Any amounts underpaid by the applicant shall be paid to the impact fee administrator within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such underpayment.*

- c. *In the case of an underpayment to the impact fee administrator, the City shall not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty (30) day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee.*
- (6) *The impact fees and the administrative procedures established by this section shall be reviewed at least once every three (3) years.*

M. Appeals

Any determination made by the impact fee administrator charged with the administration of any part of this section may be appealed to the City Council within thirty (30) days from the date of the decision to be appealed.

N. Violation

Furnishing false information on any matter relating to the administration of this section, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this section.

O. Effective Date

The provisions of this section shall take effect September 1, 2003, and from that date, the provisions herein shall be controlling within the limits of said city. (Ordinance No. O-03-98)