

ARTICLE IV. ROAD IMPACT FEE

Sec. 23-86. Short title, authority and applicability.

(a) This article shall be known and may be cited as the "Orange County Road Impact Fee Ordinance."

(b) The board of county commissioners has authority to adopt this article through general home rule powers pursuant to article VIII, § 1(g) of the Florida Constitution and chapters 125 and 163, Florida Statutes.

(c) Providing for arterial and other roads in coordination with a plan for the control of traffic is a responsibility of the county under section 125.01(1)(m), Florida Statutes, and is in the best interest of the health, safety and welfare of the citizens of the county.

(d) Planning for new roads and roadway improvements to serve new growth and development that generate additional traffic, and the implementation of such planning through the comprehensive planning process is a responsibility of the county under chapter 163, part II, Florida Statutes (the "Local Government Comprehensive Planning and Local Development Regulation Act") and is in the best interest of the health, safety and welfare of the citizens of the county.

(e) This article shall apply to all unincorporated areas of the county.

(Code 1965, § 1-54.531; Ord. No. 85-34 § 1, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Charter references: Conflicts between county ordinances and municipal ordinances, § 704.

Sec. 23-87. Intent and purpose.

(a) The board of county commissioners has determined and recognized through adoption of the 2000-2020 Orange County Comprehensive Policy Plan ("Comprehensive Policy Plan") and subsequent updates that new growth and development in the county will necessitate extensive improvements to the major road network system. In order to finance the necessary new capital improvements, several methods of financing will be employed, one of which will be the imposition of a regulatory impact fee on new growth and development which does not exceed a pro rata share of the reasonably anticipated costs of growth-necessitated major road network system expansion and improvements.

(b) Implementing a regulatory scheme that requires new development to pay a road impact fee that does not exceed a pro rata share of the reasonably anticipated expansion costs of new roads needed to serve new growth and development is necessary to implement the transportation element of the comprehensive policy plan, as adopted and amended under chapter 163, part II, Florida Statutes, and is in the best interest of the health, safety and welfare of the citizens of the county.

(c) The purpose of this article is to enable the county to allow growth and development to proceed in the county in compliance with the adopted comprehensive policy plan, and to regulate growth and development so as to require growth and development to share in the burdens of growth by paying its pro rata share for the reasonably anticipated costs of major road network system improvements.

(d) It is not the purpose of this article to collect fees from growth and development in excess of the cost of the reasonably anticipated improvements

to the major road network system needed to serve the new growth and development. The board of county commissioners hereby finds that this article has approached the problem of determining the road impact fee in a conservative and reasonable manner. This article will only partially recoup the governmental expenditures associated with growth. Under this article, existing residents also shall pay a fair share of the cost of needed improvements to the major road network system.

(e) Absent an impact agreement pursuant to section 23-94(b), it shall be the policy of the county to collect the impact fees assessed by this article in lieu of any off-site road improvements.

(Code 1965, § 1-54.532; Ord. No. 85-34 § 2, 12-9-85; Ord. No. 90-15, § 2, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-88. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Access improvements shall mean improvements designed to insure safe and adequate ingress and egress.

Accessory building or structure shall mean a detached, subordinate building, the use of which is clearly indicated and related to the use of the principal building or use of the land and which is located on the same lot as the principal building or use.

Affordable shall mean as set forth in Orange County Administrative Regulation No. 11.02.06, as it may be amended or replaced from time to time.

Agricultural structures shall mean structures designed to protect farm equipment or livestock or otherwise serve an agricultural purpose which shall be defined as horticulture, floriculture; viticulture, forestry; dairy; livestock poultry; bee; and all forms of farm products and farm production.

Applicant shall mean the person who applies for a building permit.

Appraised land value shall mean the appraised value of the area contributed or to be acquired calculated based upon the unit value of the parent parcel.

Average trip length shall mean the average length in miles of external trips, as determined in the Orlando Urban Area Transportation Study.

Building permit shall mean 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 a tie-down permit for a new mobile home unit, but not for a new recreational vehicle. The term also includes construction plan approval for new recreational vehicle spaces.

Capacity shall mean the maximum number of vehicles for a given time period which a typical new lane can safely and efficiently carry, usually expressed in terms of vehicles per day. For the purpose of this article, typical new capacity shall mean eight thousand two hundred forty-nine (8,249) vehicles per day per through lane.

County engineer shall mean the director of public works or his or her designee.

Development permit shall include any building permit, zoning approval, subdivision approval, rezoning, development order, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Diverted traffic shall mean traffic that is transferred from another transportation route, corridor or mode.

Drug store shall mean developments that provide specialty health and hygiene products, including a fully equipped pharmacy. Some additional services may be available, such as photo developing. These stores typically are stand-alone structures and operate twelve (12) hours daily.

Encumbered shall mean with reference to funds for capital improvements, funds committed in the capital improvements program for a specified improvement on a specified time schedule.

External trip shall mean any trip which has either its origin or destination at the development site and which impacts the major road network system.

Gross leasable area shall mean the total gross square footage under roof, less those areas referenced in section 23-98 herein, less ten (10) percent.

Impact fee eligible roadway shall mean a road, as determined by the county engineer, for which planning, design, right-of-way acquisition, construction, and improvement costs are eligible for road impact fee funding.

Internal trip shall mean a trip that has both its origin and destination within the development site.

Low income shall mean as defined in Orange County Administrative Regulation No. 11.02.06, as it may be amended or replaced from time to time.

Moderate income shall mean as defined in Orange County Administrative Regulation No. 11.02.06, as it may be amended or replaced from time to time.

Off-site improvements shall mean road improvements located outside of the boundaries of the parcel proposed for development site which are required by the county in order to serve the development's external trips, but not including access improvements, as defined herein.

Parent parcel shall mean the total square footage of the project or phase thereof, irrespective of the area or number of individual lots affected by the contribution of land or acquisition of land.

Restaurant, fast food shall mean eating establishments characterized by a large carry-out clientele; long hours of service (some are open for breakfast, all are open for lunch and dinner, some are open late at night or twenty-four (24) hours); and high turnover rates for eat-in customers. The establishment may or may not include a drive-through window or indoor seating.

Restaurant, high turnover shall mean sit-down eating establishments with turnover rates of approximately one (1) hour or less. This type of restaurant is usually moderately priced and frequently belongs to a restaurant chain. Generally, these restaurants serve lunch and dinner; they may also be open for breakfast and are sometimes open twenty-four (24) hours per day. Some facilities contained within this land use category may also contain a bar area for serving food and alcoholic drinks.

Restaurant, quality shall mean eating establishments of high quality and with turnover rates usually of at least one (1) hour or longer. Generally, quality restaurants do not serve breakfast; some do not serve lunch; all serve dinner. Often, the restaurants in this land use category are not a chain and reservations are required.

Retirement housing shall mean a facility that typically consists of one or more multiunit buildings designed for elderly living. It may also contain dining rooms, medical facilities, and recreational facilities.

Time share shall mean any dwelling unit or rooming unit for which a timesharing plan, as defined by F.S. ch. 721, has been established and documented.

Tourist hotel shall mean hotel developments focused on tourist commercial activities and is within that geographical area established by Resolution No. 92-M-64, as it may be amended from time to time, which sets forth the International Drive Master Transit and Improvement District Municipal Service Taxing Unit (MSTU). Resolution No. 92-M-64, as it may be amended from time to time, is incorporated into this section by this reference. The MSTU/tourist commercial activities area is demarcated by the bold lines depicted on the map attached to this ordinance as Exhibit "B," the original of which is available for inspection in the office of the planning and community services division. Hence, a tourist hotel is one that primarily serves tourist or convention clientele and is geographically located within a predominantly tourist-oriented activity area. Normally, these developments accommodate trips made by multiple modes of transportation such as busses, shuttles, rail and pedestrians. In general, such hotels experience lower vehicle trip generation rates and shorter trip lengths due to their surroundings and type of clientele.

Tourist retail shall mean retail developments focused on tourist commercial activities and is within that geographical area established by Resolution No. 92-M-64, as it may be amended from time to time, which sets forth the International Drive Master Transit and Improvement District Municipal Service Taxing Unit (MSTU). Resolution No. 92-M-64, as it may be amended from time to time, is incorporated into this section by this reference. The MSTU/tourist commercial activities area is demarcated by the bold lines depicted on the map attached to this ordinance as Exhibit "B," the original of which is available for inspection in the office of the planning and community services division. Tourist retail developments cater to a tourist clientele and are surrounded by similar types of land uses. Typically, tourist retail developments provide products that are of interest mainly to the tourist community. Furthermore, these retail uses accommodate high levels of pedestrians and transit due to the general character of their locations.

Traffic-generating development shall mean land development designed or intended to permit a use of the land which will contain more dwelling units or floor space than the then existing use of land, or to otherwise change the use of the land in a manner that increases the generation of vehicular traffic.

Trip shall mean a one-way movement of vehicular travel from an origin (one (1) trip end) to a destination (the other trip end). For the purposes of this article, trip shall have the meaning which it has in commonly accepted traffic engineering practice and which is substantially the same as the definition in the previous sentence.

Trip generation shall mean the attraction and/or production of trips caused by a given type of land development.

Very low income shall mean as defined in Orange County Administrative Regulation No. 11.02.06, as it may be amended or replaced from time to time. (Code 1965, § 1-54-534; Ord. No. 85-34, § 4, 12-9-85; Ord. No. 87-42, § 1, 12-14-87; Ord. No. 90-15, § 4, 7-2-90; Ord. No. 92-10, § 4, 4-7-92; Ord. No. 96-35, § 4, 10-29-96; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 99-02, § 6, 1-26-99; Ord. No. 2004-03, § 2, 4-27-04; Ord. No. 2005-11, § 2, 9-20-05)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 23-89. Rules of construction.

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

(1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(3) Words used in the present tense shall include the future and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(4) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(5) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

a. *And* indicates that all the connected terms, conditions, provisions or events shall apply.

b. *Or* indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

c. *Either . . . or* indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(7) Where a road right-of-way is used to define benefit area boundaries, that portion of the road right-of-way demarcating the boundary may be considered as part of either benefit area it bounds.

(Code 1965, § 1-54.533; Ord. No. 85-34 § 3, 12-9-85; Ord. No. 90-15, § 3, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 23-90. Adoption of background studies.

The board of county commissioners hereby adopts by reference the study entitled Orange County, Florida Road Impact Fee Update, dated April 2004, particularly as it relates to the allocation of a fair share of the costs of new road improvements to be borne by new users of such road improvements.

(Code 1965, § 1-54.535; Ord. No. 85-34 § 5, 12-9-85; Ord. No. 90-15, § 5, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-91. Limitation of issuance of building permits.

(a) Except as permitted by subsection (b), no person shall carry out any traffic-generating development unless the applicable alternative impact fee under section 23-92 or 23-93 was paid at the time of issuance of the building permits.

(b) (1) For the following types of projects, the road impact fee may be paid prior to the authorization of pre-power or issuance of a certificate of occupancy (temporary or otherwise), but no pre-power or certificate of

occupancy shall be authorized or issued until the impact fee has been paid as provided by subsection (b)(2):

a. A certified affordable housing project, provided an agreement setting forth the terms and conditions of the discount and deferral of the impact fee has been executed and

b. A new commercial project (a project without single-family homes or duplexes) with a building permit valuation of at least one million (\$1,000,000.00) dollars, provided an impact fee deferral form has been executed and the service charge required under subsection (b)(3) has been paid.

(2) a. For an eligible commercial project or eligible certified multifamily affordable housing project, the impact fee for the entire project shall be paid when pre-power is authorized for the first building or the first certificate of occupancy is issued.

b. For an eligible certified single-family affordable housing project, the impact fee for a home shall be paid when the pre-power for that home is authorized or the certificate of occupancy for that home is issued, whichever occurs first.

(3) a. If the road impact fee is deferred at the time of issuance of the building permit as authorized by subsection (b)(1) for an eligible commercial project, a service charge shall be assessed and a notice of nonpayment setting forth the legal description of the property and the amount of the impact fee liability shall be executed by the county. The county shall serve this notice upon the owner by certified mail and record it in the official records of the county. This notice shall thereupon operate as a lien against such property for the amount of the impact fee, and all interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

b. Upon payment of the impact fee, the county shall promptly serve a notice of payment upon the owner by certified mail and record the notice of payment in the official records of the county.

(4) In the event the road impact fee is not paid prior to the authorization of pre-power or issuance of the certificate of occupancy (temporary or otherwise), the county shall make demand for payment of the fee. If the fee is not paid within fourteen (14) days after the county makes demand:

a. The county may collect the road impact fee, interest from the date payment was due at the rate fixed by state statute for judgments, a penalty of five (5) percent per month or any portion of a month (not to exceed twenty-five (25) percent), the costs of such collection and a reasonable attorney's fee; and

b. For an eligible housing project, the building and/or license holder who pulled the building permit may be prohibited from pulling any other building permits until the road impact fee has been paid.

(Code 1965, § 1-54.536; Ord. No. 85-34 § 6, 12-9-85; Ord. No. 90-15, § 6, 7-2-90; Ord. No. 95-22, § 4, 7-25-95; Ord. No. 98-07, § 3, 2-17-98; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 99-02, § 7, 1-26-99; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-92. Road impact fee schedule.

(a) *Generally.* The road impact fees authorized by this article shall be as follows:

Road Impact Fee Schedule
TABLE INSET:

Land Use	Unit	July 1, 2004 Impact Fee Per Unit	July 1, 2005 Impact Fee Per Unit
Single-family detached	Dwelling	\$2,687.00	\$3,299.00
Multifamily	Dwelling	1,876.00	2,313.00
Mobile home park	MH Site	1,381.00	1,721.00
Retirement housing	Dwelling	606.00	743.00
Hotel/motel	Room	2,105.00	2,447.00
Tourist hotel	Room	790.00	956.00
Time share	Dwelling	965.00	1,169.00
Retail			
50,000 sq. ft. or less	1,000 sq. ft.*	11,125.00	11,923.00
50,001--100,000 sq. ft.	1,000 sq. ft.*	9,433.00	12,175.00
100,001--200,000 sq. ft.	1,000 sq. ft.*	8,833.00	10,950.00
200,001--300,000 sq. ft.	1,000 sq. ft.*	8,387.00	9,988.00
300,001--400,000 sq. ft.	1,000 sq. ft.*	7,670.00	9,320.00
400,001--500,000 sq. ft.	1,000 sq. ft.*	7,156.00	8,808.00
500,001--1,000,000 sq. ft.	1,000 sq. ft.*	6,391.00	7,709.00
1,000,001--1,200,000 sq. ft.	1,000 sq. ft.*	5,713.00	7,037.00
More than 1,200,000 sq. ft.	1,000 sq. ft.*	5,408.00	6,732.00
Tourist	1,000 sq. ft.*	3,455.00	4,184.00
Auto, new car sales	1,000 sq. ft.	4,479.00	5,518.00
Auto service	1,000 sq. ft.	3,602.00	4,361.00
Bank	1,000 sq. ft.	18,688.00	22,479.00
Day care center	1,000 sq. ft.	5,505.00	6,375.00
Drug store	1,000 sq. ft.	5,929.00	7,179.00
Racquet club	1,000 sq. ft.	2,254.00	2,831.00
Restaurant			
Quality	1,000 sq. ft.	10,430.00	11,521.00
High-turnover	1,000 sq. ft.	14,692.00	15,854.00
Fast food	1,000 sq. ft.	22,479.00	22,152.00
Supermarket	1,000 sq. ft.	10,882.00	11,740.00

Office			
100,000 sq. ft. or less	1,000 sq. ft.	4,882.00	6,029.00
100,001--200,000 sq. ft.	1,000 sq. ft.	3,733.00	4,682.00
More than 200,000 sq. ft.	1,000 sq. ft.	3,235.00	4,166.00
Medical/dental	1,000 sq. ft.	11,127.00	13,915.00
Light industrial	1,000 sq. ft.	2,346.00	2,950.00
Manufacturing	1,000 sq. ft.	1,289.00	1,614.00
Warehousing	1,000 sq. ft.	1,667.00	2,095.00
Mini-warehouse	1,000 sq. ft.	656.00	844.00
Hospital	1,000 sq. ft.	4,581.00	5,890.00
Nursing home	1,000 sq. ft.	2,045.00	2,045.00
Library	1,000 sq. ft.	6,928.00	8,484.00
Post office	1,000 sq. ft.	13,918.00	17,908.00
Public assembly	1,000 sq. ft.	2,388.00	2,923.00
School	1,000 sq. ft.	3,419.00	4,417.00

* Gross leasable area (all others are gross floor area)

(b) *Determination of land use.* In the event that the land use for which the building permit is proposed is not within the above categories or fits within a different category from that determined by the building department, then the county administrator or his designee shall make a determination as to the appropriate land use designation. Such determination may be appealed to the board of county commissioners upon payment of a nonrefundable processing fee.

(c) *Aggregation.* An applicant for a building permit shall not be entitled to aggregate the square footage of a multi-building project for the purpose of calculating that project's impact fee unless such multi-building project is part of a unified plan of development, less outparcels, approved by the planning and community services division.

(d) *Appeal process.*

(1) In the event a person believes that he is eligible for an alternative impact fee calculation under section 23-93, to deferral of payment under section 23-94, to credits under section 23-95, to vested rights under section 23-96, to an exemption under section 23-98, or to any other bona fide determination, he shall submit a written request to the planning and community services division along with all necessary documentation. The appropriate county staff shall review the request within a reasonable period of time. After the appropriate county staff has reviewed the written request, the planning and community services division shall promptly mail or hand deliver the staff's determination in written form to the person.

(2) If the person disagrees with the written determination rendered by county staff through the planning and community services division, he may appeal the determination to the board of county commissioners upon payment of a non-

refundable processing fee. If he decides to appeal the determination, he shall file a written notice of appeal with the planning and community services division not later than fifteen (15) days after the date that the staff written determination was rendered. If the notice of appeal is not filed with the planning department within the fifteen-day period, the person waives his right to appeal the determination to the board of county commissioners. Within fifteen (15) days after receipt of the written notice of appeal, the planning and community services division shall advise the person of a hearing date and time before the board of county commissioners.

(3) In the event a person disagrees with the appellate decision of the board of county commissioners, he may challenge such decision in the circuit court by filing a petition for writ of certiorari no later than thirty (30) days from the date of issuance of the decision of the board of county commissioners.

(4) In the event a person pays the impact fees pursuant to this article under written protest with the intent of filing an appeal, and in the event his request is subsequently approved by the staff, or his request is subsequently rejected by the staff but the staff's determination is thereafter disapproved by the appellate decision of the board of county commissioners, the county shall not pay interest on the funds paid under protest and subsequently refunded, unless the county has earned interest on such funds.

(e) *Phasing of impact fee schedule.* Impact fee rates shall be phased as reflected in the two-step impact fee schedule set forth in section 23-92(a).

(f) *Indexing of impact fees.* To account in part for the effects of inflation on the costs of road construction, impact fees shall increase by a set percentage each year.

(1) At the beginning of the second year (twelve (12) months after the date collection of the 2004 updated impact fees is implemented), the second year impact fees shall be automatically increased by adding three (3) percent of the impact fees as established in section 23-92(a) to derive the second-year base impact fees.

(2) At the beginning of the third year, the third year impact fees shall be automatically increased by adding three (3) percent of the second-year base impact fees to the second-year base impact fees to derive the third-year base impact fees.

(3) At the beginning of the fourth year, the fourth year impact fees shall be automatically increased by adding three (3) percent of the third-year base impact fees to the third-year base impact fees to derive the fourth-year base impact fees.

(4) At the beginning of the fifth year, the fifth year impact fees shall be automatically increased by adding three (3) percent of the fourth-year base impact fees to the fourth-year base impact fees to derive the fifth-year base impact fees.

(5) If, for any reason, the road impact fees are not undated by the beginning of the sixth year or thereafter, the impact fees shall continue to automatically increase as described above.

(Code 1965, § 1-54.537; Ord. No. 85-34 § 7, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 92-21, § 4, 7-21-92; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 98-36, § 2, 12-15-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-93. Alternative impact fee calculation.

(a) In the event an applicant believes that the cost of off-site roadway improvements needed to serve his proposed development is less than the fee established in section 23-92, the applicant may at his own expense submit an alternative fee calculation to the county administrator or his designee pursuant to the provisions of this section. Such an alternative fee calculation shall be submitted as follows:

(1) Prior to the issuance of the initial certificate of occupancy for a non-phased project; or

(2) Prior to the issuance of the initial certificate of occupancy for a phase within a phased project.

If the county administrator or his designee finds that the data, information and assumptions used by the applicant to calculate the alternative impact fee satisfy the requirements of this section, the alternative impact fee shall be deemed the impact fee due and owing for the proposed development.

(b) The alternative impact fee shall be calculated by use of the following formula for each land use:

$$\text{NET COST} = \text{COST} - \text{CREDIT}$$

$$\text{COST} = \text{VMT} \times \text{PCT} \times \text{COST/VMT}$$

$$\text{CREDIT} = \text{VMT} \times \text{CREDIT/VMT}$$

Where:

TABLE INSET:

VMT	=	$\text{ADT} \times \% \text{ NEW} \times \text{ATL} \div 2$
ADT	=	Trip ends during a weekday
% NEW	=	Percent of trips that are primary trips, as opposed to pass by or diverted-link trips
ATL	=	Average trip length
$\div 2$	=	Avoids double-counting trips for origin and destination
PCT	=	County-wide vehicle-miles of travel (VMT) on non-limited-access roadways as a percent of total county-wide VMT, excluding through traffic that does not have an origin or destination in the county (63.9%)
COST/VMT	=	$\text{COST/LANE-MILE} \div \text{CAPACITY} (\$200.37)$
COST/LANE-MILE	=	Average cost to add a new lane to the major roadway system (\$1,652,836.00)
CAPACITY	=	Average daily capacity of a lane at desired LOS (8,249)
CREDIT/VMT	=	$\$/\text{GAL} \div \text{MPG} \times 365 \times \text{NPV} (\$44.41)$

\$/GAL	=	Capacity-expanding funding for roads per gallon of gasoline consumed (\$0.133)
MPG	=	Miles per gallon, average for U.S. motor vehicle fleet (16.9 mpg)
365	=	Days per year (used to convert daily VMT to annual VMT)
NPV	=	Net present value factor (15.42: blended rate based on 5-year municipal bond rates for 1st 5 years, 20-year municipal bond rates for next 20 years)

(c) The alternative impact fee calculations shall be based on data, information or assumptions contained in this article or independent sources, provided that:

(1) The independent source is a county-accepted source of transportation engineering or planning data or information; or

(2) The independent source is a local study carried out pursuant to an accepted methodology or transportation planning or engineering.

(d) If a previously approved development submitted, during the approval process, a traffic impact study substantially consistent with the criteria required by this section, and if that study is determined 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 article 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 five (5) years earlier is invalid. This subsection shall not apply where a development order previously granted provides that the fee schedule in section 23-92 shall supersede such traffic impact study.

(e) The diversion and capture factor used in the alternative impact fee calculations shall be based on actual surveys conducted in the county. For the purposes of the alternative impact fee calculation, the diversion and capture figure shall be the percentage of average daily trips that a proposed use will generate that constitutes new or additional trips added to the county's major road network system. Those trips that do not represent additional trip ends shall not be counted as new or additional trips.

(f) The provisions of this section 23-93 shall be implemented and administered in accordance with the procedures set forth in Orange County Administrative Regulations No. 6.11.01, as it may be amended from time to time.

(g) The county administrator or his designee shall conduct a follow-up review to confirm the approved assumptions in the alternative impact fee calculation study within five (5) years of acceptance of the study by the county. Impact fees attributable to any trips shown to exist but not previously accounted for in the study shall be paid within thirty (30) days of a demand letter issued by the county to the property owner.

(Code 1965, § 1-54.538; Ord. No. 85-34 § 8, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04; Ord. No. 2005-11, § 2, 9-20-05)

Sec. 23-94. Presumptions, agreements and security requirements.

(a) *Development presumed to have maximum impact permitted.* The proposed development 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.

(b) *Impact agreement.*

(1) In lieu of the payment of fees as calculated in section 23-92 or 23-93, any applicant may propose to enter into an impact agreement with the county designed to establish just and equitable fees or their equivalent and standards of service needs appropriate to the circumstances of the specific development proposed. Such an agreement may include, but shall not be limited to, provisions which:

a. Modify the presumption of maximum impact set forth in subsection (a) and provide an impact fee which may differ from that set forth in section 23-92 by specifying the nature of the proposed development for purposes of computing actual trips, provided that the agreement shall establish legally enforceable means for ensuring that the number of trips will not exceed the trips generated by the agreed upon development;

b. Permit the construction of specific transportation improvements in lieu of or with a credit against the road impact fee assessable and/or pursuant to a pay back schedule, allow the developer to recover the actual cost of such improvements in excess of the amount which would have been assessed by this article as subsequent users of such transportation improvements obtain building permits and pay impact fees;

c. Permit a schedule and method for payment of the fees 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 section 23-92, provided that security is posted ensuring payment of the fees, in a form acceptable to the county, which security shall be in the form of a cash bond, surety bond, or irrevocable letter of credit.

(2) Any agreement proposed by an applicant pursuant to this subsection shall be presented to and approved by the board of county commissioners prior to the issuance of a building permit. Any such agreement may provide for execution by mortgagees, lienholders or contract purchasers in addition to the landowner, and may permit any party to record such agreement in the official records of the county. The board of county commissioners 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 the principles set forth in *Contractors & Builders Association v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976), *Hollywood Inc. v. Broward County*, 432 So. 2d 606 (Fla. 4th DCA 1983), cert. denied, 440 So. 2d 352 (Fla. 1983); and *Home Builders and Contractors Association of Palm Beach County, Inc. v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1984), cert. denied, 451 So. 2d 848 (Fla. 1984).

(Code 1965, § 1-54.539; Ord. No. 85-34 § 9, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 99-02, § 8, 1-26-99; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-95. Credits.

(a) An applicant shall be entitled to a credit against any road impact fee assessed pursuant to this article in an amount equal to the cost of off-site improvements for impact fee eligible roads or contributions of land, money or services for off-site improvements for impact fee eligible roads contributed or previously contributed, paid for or committed to by the applicant or his predecessor in interest as a condition of any development permit issued by the county. A credit shall not be awarded for any contribution of land, money, or services not made directly by the applicant, including a contribution or grant made by another entity. The cost of such improvements shall be based on the following criteria in subsections (a)(1) and (a)(2), subject to subsections (a)(3) and (a)(4):

(1) The actual cost, or estimated cost of improvements certified by an engineer and approved by the county in accordance with the procedures set forth in Orange County Administrative Regulation No. 6.11.02, as it may be amended from time to time; and

(2) A pro rata share of the appraised land value of the parent parcel (which land value is based on the "date of valuation" as defined in section 23-95(b) below) as determined by an M.A.I. appraiser acceptable to the county who was selected and paid for by the applicant, and who used accepted right-of-way appraisal techniques. If the appraisal does not conform to the requirements of this article and the applicable administrative regulations, the appraisal shall be corrected and resubmitted. In the event the county administrator or his designee accepts the methodology of the appraisal but disagrees with the appraised value, he may engage another appraiser and the value shall be an amount equal to the average of the two (2) appraisals. In the alternative, the appraised land value of the parent parcel may be as negotiated and stated as a specific dollar value on a per-acre basis in a developer's agreement between the applicant and the county.

(3) Except for property located in Horizon West which is subject to Orange County Code chapter 30, article XIV, Village Land Use Classification Implementation, and chapter 38, article VIII, division 8, Village Planned Development Code, with respect to an on-site or off-site road required as a condition of development, the credit for the right-of-way and the roadway therein shall be limited to the extent of excess capacity created. However, with respect to dedication for future right-of-way not required as a development approval condition for the subject development, the credit shall be for one hundred (100) percent of such future right-of-way.

(4) For property which is located in Horizon West, with such property being subject to Orange County Code chapter 30, article XIV, Village Land Use Classification Implementation, and chapter 38, article VIII, division 8, village Planned Development Code, for an on-site or off-site road to be eligible for a credit the road must be an impact fee eligible road. For roads deemed eligible, the credit for the right-of-way and the roadway therein shall be limited to the extent of excess capacity created by the applicant's contribution as measured against the impacts attributable to the applicant's project on the roads deemed eligible.

(b) As used in this section, date of valuation shall mean:

(1) For projects that enter into a developer's agreement with the county pertaining to a condition of development requiring the contribution of land, the date of valuation shall include both a determination of the land use to be

used in the evaluation and be calculated as either an agreed upon date or the day before the date on which the developer's agreement becomes effective. The developer's agreement shall specifically state the date of valuation and the determined land use to be used in the evaluation, or in the alternative, the developer's agreement may state as a specific dollar value the negotiated appraised land value of the parent parcel on a per-acre basis.

2) For projects which are zoned or are being rezoned to planned development (PD) and:

a. The PD has no land use approval, provided the land use approval imposes a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the land use approval.

b. The PD has land use approval and is seeking either a preliminary subdivision plan or development plan approval then:

i. Provided the existing land use plan imposed a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the land use approval.

ii. If the existing land use plan did not impose a condition of development requiring the contribution of land, but the preliminary subdivision plan and/or the development plan imposes a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the development plan approval.

c. The PD has land use approval and preliminary subdivision plan/development plan approval, but neither of those approvals imposed a condition of development which required the contribution of land, the date of valuation shall be the day before the date on which the development's first building permit which prompted the credit request was approved by the building department.

3. For projects which are in conventional zoning districts and are subject to the Subdivision Regulations, Orange County Code, chapter 34, then:

a. Provided the preliminary subdivision plan imposed a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the rezoning of the property to its current zoning.

b. Provided the project is platted and the contribution of land was not required as a condition of development, the date of valuation shall be the day before the date on which the development's first building permit which prompted the credit request was approved by the building department.

4. For projects which are in conventional zoning districts and subject to the Orange County Site Development Ordinance (sometimes referred to as the Commercial Site Plan Process), Orange County Code, chapter 30, article VIII, and:

a. The project has an existing plan or a proposed plan of which approval by the county requires the contribution of land, the date of valuation shall be the day before the date of the rezoning of the property to its current zoning.

b. The project has an existing plan or proposed plan which does not require the contribution of land, the date of valuation shall be the day before the date on which the development's first building permit which prompted the credit request was approved by the building department.

(5) In applying subsections (b)(2), (b)(3) and (b)(4) above, on the date of valuation no consideration shall be given to the proposed land use and/or zoning pending under the requested application; in other words, only the

actual land use/zoning existing on the date of valuation shall be utilized for calculating value.

(b) In all cases where the date of valuation is the day before the date of rezoning to the current zoning for a property, no date of rezoning shall be calculated to be further into the past than January 1, 1986.

(c) An applicant must apply for the credit for an improvement or contribution prior to the issuance of the project's first certificate of occupancy.

(d) An applicant is not entitled to use any portion of a credit account granted pursuant to this section by obtaining a refund for impact fees that were paid for building permits issued prior to the date of the planning department's receipt of the credit application unless the applicant has entered into an agreement with the county that provides otherwise.

(e) A portion or all of a credit account may be assigned and reassigned under the terms and conditions acceptable to the county for use only within the road impact zone in which the project site is located.

(f) Any credit issued shall take into account as an offset to the credit an amount equal to the impact fee imposed by section 23-92 herein multiplied by the number of permits issued prior to January 1, 1986, as if Ordinance No. 85-34 had been in effect at the time of issuance of the permits.

(g) Previous development permits 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 permit. Road improvements required by previous development permits shall not be given a credit unless they meet the requirements of this section.

(h) Except in the case of a good faith mistake, if an applicant pays the impact fee when a credit should have been used, the applicant is not entitled to a refund for the impact fees paid. In all cases, the applicant will be allowed to use the credits within the impact fee zone in which it is located.

(i) If an applicant disagrees with a written opinion issued by the county staff pursuant to this section, the applicant may submit a written appeal to the chairman of the development review committee (DRC). The DRC will review the appeal along with input from the county attorney. The DRC may grant the appeal, deny the appeal, or request additional information to justify the appeal. Decisions of the DRC may be appealed to the board of county commissioners upon payment of a non-refundable appeal fee.

(j) The provisions of this section 23-95 shall be implemented and administered in accordance with the procedures set forth in Orange County Administrative Regulation No. 6.11.02, as it may be amended from time to time.

(Code 1965, § 1-54.540; Ord. No. 85-34 § 10, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 91-25, § 1, 11-15-91; Ord. No. 92-21, § 4, 7-21-92; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-96. Vested rights.

(a) A developer or successor in interest of land which has received a development permit may petition the board of county commissioners for a vested rights determination which would exempt the petitioner from the provisions of this article. Such petition shall be evaluated based on the following criteria:

(1) There exists a valid, unexpired governmental act of the county authorizing the specific development for which a determination is sought;

(2) Expenditures or obligations made or incurred in reliance upon the authorizing act that are reasonably equivalent to the fees required by this article;

(3) That it would be inequitable to deny the petitioner the opportunity to complete the previously approved development under the conditions of approval by requiring the developer to comply with the requirements of this article. For the purposes of this subsection (3), 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 article;

b. Whether the expenses or obligations were made or incurred subsequent to May 6, 1985, after which date the adoption of Ordinance No. 85-34 was pending, and

c. Whether the operation of this article would create an onerous burden which would prevent petitioner from making a reasonable return on his investment.

(b) If a previously approved development contained conditions respecting traffic impacts, road impact fees and their designated uses, or off-site transportation improvements, the developer, or its successor, may request a modification of such prior approvals in order to bring the approval conditions into consistency with this article. Any such modification of prior approvals and amendments to development permits so shall not be deemed a substantial change under chapter 38, article VIII (planned development ordinance) or a substantial deviation under chapter 380, Florida Statutes.

(Code 1965, § 1-54.541; Ord. No. 85-34 § 11, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-97. Use of funds collected.

(a) *Creation of trust funds.* The impact fees collected by the county pursuant to this section and the capacity reservation fees collected by the county pursuant to the concurrency management ordinance shall be kept separate from other revenue of the county. The impact fees and capacity reservation fees shall be separately earmarked. There shall be one (1) fund established for each of the four (4) benefit areas shown on a map labeled Exhibit "A" attached to the legislation from which this section is derived and made a part hereof. The capacity reservation fees shall be handled and refunded in a manner consistent with the concurrency management ordinance.

(b) *Limitation of expenditure of funds collected.*

(1) No impact fees shall be expended on a particular capital improvement pursuant to this article unless or until the board of county commissioners programs and identifies a source of funds for right-of-way acquisition and construction of improvements needed to overcome existing service deficiencies or future service deficiencies for a particular capital improvement which deficiency is not attributable to new growth and development.

(2) The funds collected by reason of the establishment of the road impact fee in accordance with this article shall be used solely for the purpose of acquisition, expansion and development of the roads, streets, highways, and

bridges determined to be needed to serve new development, including, but not limited to:

- a. Design and construction plan preparation;
- b. Right-of-way acquisition;
- c. Construction of new through lanes;
- d. Construction of new turn lanes;
- e. Construction of new bridges;
- f. Construction of new drainage facilities in conjunction with new roadway construction;
- g. Purchase and installation of traffic control devices;
- h. Construction of new curbs, medians and shoulders;
- i. Conservation area mitigation; and
- j. Compensating storage.

(3) All funds collected by reason of the establishment of the road impact fee in accordance with this article shall be used exclusively within the benefit areas from which they were collected and in a manner consistent with the principles set forth in *Contractors & Builders Association v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976), *Hollywood, Inc. V. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983) *cert. denied*, 440 So. 2d 352 (Fla. 1983), and *Home Builders and Contractors Association of Palm Beach County, Inc. V. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 984), *cert. denied*, 451 So. 2d 848 (Fla. 1984), and otherwise consistent with all requirements of the Constitution of the United States and the state and all applicable laws. The funds shall not be used to maintain or repair any roads.

(c) *Disbursal of funds.* Funds withdrawn from these road impact fee accounts must be used solely in accordance with the provisions of this section. The disbursal of such funds shall require the approval of the board of county commissioners, upon recommendation of the county administrator.

(d) *Interest on funds.* Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. All income derived shall be deposited in the applicable trust account.

(e) *Return of funds.* The impact fees collected pursuant to this article shall be returned to the then present owner of the development if the development for which the fees were paid was never begun or in accordance with the following procedure if the fees have not been encumbered or spent by the end of the calendar quarter immediately following six (6) years from the date the fees were received in accordance with the following procedure:

(1) The then present owner must petition the board of county commissioners for the refund within one (1) year following the end of the calendar quarter immediately following six (6) years from the date on which the fee was received.

(2) The petition must be submitted to the county administrator 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) Within sixty (60) days from the date of receipt of petition for refund, the county administrator or his designee shall advise the petitioner and the board

of county commissioners of the status of the fee requested for refund. For the purpose of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made in accordance with subsection (c).

(4) When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following six (6) years from the date the fees were paid, the money shall be returned with interest at the rate earned by the county.

(Code 1965, § 1-54.542; Ord. No. 85-34 § 12, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 92-21, § 1, 7-21-92; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-98. Exemptions and discounts.

(a) Exemptions.

(1) The following shall be exempted from payment of the road impact fee to the extent there is no increase in traffic generation associated with the property or use:

- a. Alterations of an existing structure where the use is not changed.
- b. The construction of accessory buildings or structures.
- c. The replacement of a building or structure with a new building or structure, provided the original building or structure was located on the site in 1983 or thereafter. If the land use of the replacement building or structure is different from the original structure, the exemption shall be limited to the equivalent fee for the original structure. Documentation of the existence of the building or structure shall be submitted to the building official.
- d. The construction of agricultural structures.
- e. Eaves, overhangs, and unenclosed canopied walkways.

(2) To the extent such construction does increase traffic generation rates, the new or additional trips shall be subject to payment of the impact fee under this article.

(b) Discounts.

(1) Notwithstanding that there may be an increase in traffic generation associated with the use, any affordable single-family residential unit, affordable multi-family unit, or affordable mobile home unit to be constructed within a project which has received a certificate of affordability from the county's housing and community development department shall be eligible for a discount on the applicable road impact fee according to the procedures set forth in Orange County Administrative Regulations No. 11.02.06, as it may be amended or replaced from time to time.

(2) The county shall not increase the amount of the road impact fee payable under section 23-92 to replace any revenue lost on account of the discounts granted under this subsection.

(3) The board of county commissioners may adopt administrative regulations and guidelines to implement subsection 23-98(b) and to ensure that a housing unit which is granted a discount remains affordable.

(Code 1965, § 1-54.513; Ord. No. 85-34 § 13, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 92-10, § 5, 4-7-92; Ord. No. 96-35, § 5, 10-29-96; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-99. Review of article.

This article shall be reviewed by the board of county commissioners at least every five (5) years. The review shall consider trip generation rates, trip lengths and actual construction and right-of-way acquisition costs of work contracted for by the county and the state department of transportation within the county. The purpose of this review is to analyze the effects of inflation on the actual costs of roadway improvements, to review and revise, if necessary, the improvements listed in the projected roadway needs network and to ensure that the fee charged new land development activity generating traffic will not exceed its pro rata share for the reasonably anticipated expansion costs of road improvements necessitated solely by its presence.

(Code 1965, § 1-54.544; Ord. No. 85-34 § 14, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-100. Economic impact determination.

The board of county commissioners does hereby determine and find, pursuant to section 30-2(b)(2) that sufficient information has been provided for the board of county commissioners to assess the economic impact of this article on the development of real property in the county. The board of county commissioners does hereby determine and find that no further economic impact statement or economic impact information is required in this matter. If the ongoing planning studies and periodic review reveal a detrimental economic impact, this article shall be reviewed and revised accordingly.

(Code 1965, § 1-54.545; Ord. No. 85-34 § 15, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Sec. 23-101. Penalty.

Violations of this article shall be punished as provided in section 1-9. Additionally the county may obtain an injunction or other legal or equitable relief in the circuit court against any person violating this article.

(Code 1965, § 1-54.546; Ord. No. 85-34 § 16, 12-9-85; Ord. No. 90-15, § 1, 7-2-90; Ord. No. 98-27, § 2, 10-20-98; Ord. No. 2004-03, § 2, 4-27-04)

Secs. 23-102--23-120. Reserved.