

**CITY OF BONITA SPRINGS
ORDINANCE NO. 10 – 06**

AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 2, ARTICLE VI, DIVISION 1, AMENDING 2-266 RELATING TO ROAD IMPACT FEES; PROVIDING FOR CHANGES TO THE REQUIREMENTS FOR THE ASSESSMENT OF IMPACT FEES FOR CHANGES OF USE IN EXISTING BUILDINGS THROUGH THE IMPLEMENTATION OF THE IMPACT FEE PROGRAM FOR EXISTING COMMERCIAL DEVELOPMENT; ESTABLISHING A SUNSET DATE FOR THE PROGRAM UNLESS OFFICIALLY EXTENDED BY CITY COUNCIL; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Bonita Springs has used impact fees as a funding source for growth related capital improvements for various facilities since its incorporation; and

WHEREAS, at its April 7, 2010 meeting, City Council directed staff to go forward in preparation of an ordinance and prepare the analysis for determine whether it is in the City of Bonita Springs interest to reduce its commercial building vacancy rate by creating a short term program related to the requirements for the assessment of impact fees for changes of use in existing Buildings be amended through the implementation of the Impact Fee Program for Existing Commercial Redevelopment; and

WHEREAS, the adoption of this Ordinance incorporates provisions that amend Section 2-266 of the Bonita Springs Land Development Code related to change of size or use by establishing a program through which development shall not be assessed additional impact fees related to changes of use within an existing building provided it meets the specified criteria.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

**SECTION ONE: BONITA SPRINGS LAND DEVELOPMENT CODE
CHAPTER SECTION 2-266**

The City of Bonita Springs Land Development Code Chapter 2, Article VI, Division 2, Section 2-266 is hereby amended and replaced with new language underlined and deleted language cross-hatched, as follows:

DIVISION 2. ROADS IMPACT FEE

§2-266. COMPUTATION OF AMOUNT.

- A. At the option of the fee payer, the amount of the roads impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to square feet refers to the gross square footage of each floor of a building measured to the outside of the exterior walls, and not usable, interior, rentable, noncommon or other forms of net square footage. The reference in the schedule to recreational vehicles refers to the number of recreational vehicle sites which are permitted by the applicable final development order.

Table 2-2 Roads Impact Fee Schedule

Land Use Type (Unit)	Roads Impact Fee <i>EFFECTIVE DECEMBER 5, 2007</i>
Single-Family	\$8,211 per unit
Multiple-family building, Duplex, Townhouse, Two-Family attached	\$5,759 per unit
Mobile Home (1)/RV Park Site	\$4,288 per unit
Elderly and Disabled Housing	\$2,982 per unit
Assisted Living Facility (ALF)	\$1,851 per unit
Hotel/Motel or Timeshare	\$6,185 per unit
Retail or Shopping Center (0-500,000+ sf)	\$11,451 per 1,000 sf
Bank	\$28,103 per 1,000 sf
Car Wash, Self-Service	\$4,814 per stall
Convenience Store w/Gas Sales	\$32,162 per 1,000 sf
Golf Course (2)	\$2,466 per acre
Movie Theater	\$21,241 per 1,000 sf
Restaurant, Fast Food	\$32,348 per 1,000 sf
Restaurant, Standard	\$22,028 per 1,000 sf
Office, General	\$6,683 per 1,000 sf
Office, Medical	\$22,071 per 1,000 sf
Hospital	\$10,735 per 1,000 sf
Nursing Home	\$3,726 per 1,000 sf
Church	\$4,184 per 1,000 sf
Day Care Center	\$15,660 per 1,000 sf
Elementary/Secondary School (Private)	\$2,710 per 1,000 sf
Industrial Park or General Industrial	\$5,666 per 1,000 sf
Warehouse	\$4,038 per 1,000 sf
Mini-Warehouse	\$1,453 per 1,000 sf

Notes:

- (1) Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee calculation purposes.
- (2) Impact fees for the golf course (i.e., tees, fairways, greens, accessory structures such as golf cart houses, etc.) are due and payable prior to the issuance of the development order for the golf course. The golf course club house and related club house facilities will not be included in the impact fee calculation for the golf course. Impact fees for the club house and related facilities will be calculated

separately, at the time of building permit issuance for these facilities, based upon the uses encompassed by the club house facility.

- (3) Under this article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit meets all of the following criteria:
 - (a) the permit is approved by the city;
 - (b) has been picked up by the owner or his agent; and
 - (c) all applicable fee have been paid.
- (4) The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to RV parks.
- (5) The fee schedule in effect prior to December 5, 2007 will remain in effect until the new fees take effect as follows:
 - (a) After December 5, 2007, the City Manager or designee may accept payment accordingly to the fee schedule in effect prior to December 5, 2007 only if the following conditions are met. The City Manager's decision is not subject to administrative appeal under the Land Development Code.
 - (1) The application for the permit or development order must have been properly submitted and sufficient for review on or before December 5, 2007 and
 - (2) The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond December 5, 2007; and
 - (3) The applicant submits a written request to the City Manager specifying the reasons for the request; and
 - (4) The City Manager's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and
 - (5) The ability and authority to accept payments under this subsection will terminate on March 1, 2008.
 - (6) If a building permit is requested for a building with mixed uses, then the fee will be determined according to the schedule set out in this subsection by apportioning the total space within the building according to the space devoted to each principal use. However, a shopping center will be considered a principal use. If the type of development activity for which a building permit is applied is not specified on the fee schedule set out in this subsection, the City Manager or designee will use the fee applicable to the most nearly comparable type of land use on the fee schedule set out in this subsection. The City Manager or designee will be guided in the selection of a comparable type by the Institute of Transportation Engineers' "Trip

Generation, An Informational Report” (latest edition), studies or reports done by the United States Department of Transportation, the state department of transportation and the county department of transportation, and articles or reports appearing in the ITE Journal. If the City Manager or designee determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the City Manager or designee must determine the fee by:

- (1) Using traffic generation statistics from the sources named in this subsection; and
- (2) Applying the formula set forth in subsection (D) of this Section.

End of Footnotes to Table 2-2

- B. When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the roads impact fee will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.
1. If the roads impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original feepayer or collected by the county or City, whichever is applicable. If roads impact fees are owed, no City or county permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.
 2. Change of Size or Use Impact Fee Program for Existing Commercial Redevelopment. Effective August 15, 2010 to August 15, 2012, unless extended for an addition period of time at the sole discretion of City Council through a Resolution, the City of Bonita Springs will not assess additional road impact fees related to changes of use within existing buildings provided they meet the criteria set forth:
 - a. The change of use is located in a lawfully existing building which has had a Certificate of Occupancy for a commercial or industrial use issued prior to the commencement of this program.
 - b. Buildings which paid impact fees for non-commercial uses (e.g., residential, schools, or churches) are not eligible for non-assessment under this program.
 - c. Nothing in this program should be construed as to permit a change in use as to zoning. Any change permitted in the program must be consistent with the zoning of the property and other land development regulations. Starting August 15, 2011, prior to issuance of a certificate of occupancy, staff may ask City Council to require a traffic generation report on projects located on streets where the LOS is “D” or lower, to verify that concurrency will not be adversely affected.
 - d. Impact fees for the existing building must have been paid the then applicable impact fees at time of construction.

- e. The proposed change of use is solely within the existing building and does not include the addition of any new square footage.
 - f. Demolition and reconstruction projects are not eligible for this program.
 - g. Following the expiration of the Change of Size or Use Impact Fee Program ("Program"), any use permitted under the program will be entitled to utilize the program without assessment of additional road impact fees for the period while the property is being used for the same use entitled during this Program.
- C. If a feepayer opts not to have the impact fee determined according to subsection (A) of this Section, then the feepayer must prepare and submit to the City Manager or designee an independent fee calculation study for the land development activity for which a building permit, mobile home move-on permit or recreational vehicle development order is sought. The independent fee calculation study must measure the impact of the development in question on the road system illustrated on Figure 1 of the transportation element of the Bonita Springs Comprehensive Plan by following the prescribed methodologies and formats for the study established by the County Administrative Code. The feepayer must attend a pre-application meeting with the City Manager or designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering and economic documentation submitted must address all aspects of the impact fee formula that the City Manager or designee determines to be relevant in defining the project's impacts at the pre-application meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:
1. *Traffic engineering studies.*
 - a. Documentation of trip generation rates appropriate for the proposed land development activity;
 - b. Documentation of trip length appropriate for the proposed land development activity; and
 - c. Documentation of the percent of new trip data appropriate for the proposed land development activity.
 2. *Cost documentation studies.* The feepayer may also provide documentation substantiating that the costs to accommodate the impacts of the proposed development, or the revenue credits due to the development, differ from the average figures used in developing the fee schedule. This documentation must be prepared and presented by qualified professionals in their respective fields and must follow best professional practices and methodologies. The following formula must be used by the City Manager or designee to determine the roads impact fee per unit of development:

IMPACT FEE = VMT x NET COST/VMT		
Where:		
VMT	=	ADT x % NEW x LENGTH ÷ 2
ADT	=	Trip ends during average weekday

%NEW	=	Percent of trips that are primary, as opposed to pass-by or diverted-link trips
LENGTH	=	Average length of a trip on the approved road system
+ 2	=	Avoids double-counting trips for origin and destination
NET COST/VMT	=	COST/VMT, CREDIT/VMT
COST/VMT	=	COST/LANE-MILE ÷ AVG LANE CAPACITY
COST/LANE-MILE	=	Average cost to add a new lane to the approved roadway system
AVG LANE CAPACITY	=	Average daily capacity of a lane at level of service "D"
CREDIT/VMT	=	\$/GAL ÷ MPG x 365 x NPV
\$/GAL	=	Capacity-expanding funding for roads per gallon of gasoline consumed
MPG	=	Miles per gallon, average for U.S. motor vehicle fleet
365	=	Days per year (used to convert daily VMT to annual VMT)
NPV	=	Net present value factor (i.e., 12.46 for 20 years at 5% discount)

D. All buildings, structures and facilities capable of being used by the public will be charged the full roads impact fee set forth for that use in the impact fee schedule. However, the City recognizes that there are instances where a building, structure or facility capable of public use is actually restricted to the private use of a specific development (i.e., private clubhouse dining facilities built as a planned development amenity). In these instances, a reduced impact fee may be claimed by the property owner in accordance with the following:

1. Filing of an independent fee calculation study ultimately approved by the City; or
2. Acceptance by the developers and property owner, as a condition of building permit or development order approval, that:
 - a. the developer or owner will submit documentation, acceptable to Division of Development Services, that shows the proposed private use will have no off-site road impacts; and

- b. the proposed use will be restricted to the sole use of the residents of the subdivision by covenants acceptable to the City Attorney or designee and enforced by a property owner's association or similar entity; and
 - c. the certificate of occupancy will be revoked if the City Manager or designee determines the proposed private use has changed in character to that of a public use and the certificate of occupancy may not be reinstated until the full impact fee is paid; and
 - d. the City will withhold all building permits and development approvals for all phases or parts of the development connected with, or entitled to use, the proposed private facility until the full impact fee is paid.
- E. The impact fee schedule set forth in this Division will be administratively reviewed and reanalyzed every three years. As a result of this review, City Staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis. In accordance with this Section, the first review of the roads impact fee schedule must be completed and any amendments to the schedule presented to the City Council for adoption no later than September 1, 2010.
- F. Automatic annual inflation adjustment: On January 1 following each calendar year during which the fee schedule was not comprehensively updated, an adjusted fee schedule shall become effective. The first automatic update of the fees shall become effective on January 1, 2009 and in accordance with §163.31801, the "Florida Impact Fee Act," any increase will not take effect until 90 days after adoption of a resolution. The city manager shall publish on the City's web site and otherwise make publicly available the adjusted impact fee schedule. The city manager shall calculate adjustments to the impact fee rates based upon the percentage change over the most recently-available preceding 12-month period in the Engineering News-Record construction cost index, or, if this index becomes unavailable, a comparable index.

SECTION TWO: CONFLICTS

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION THREE: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

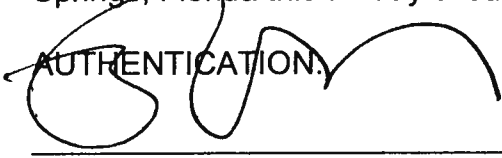
SECTION FOUR: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

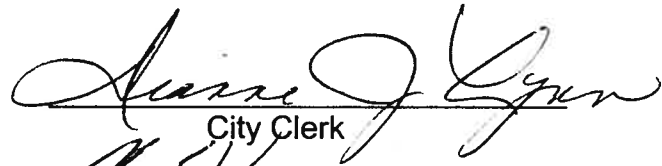
SECTION FIVE: EFFECTIVE DATE

City Council makes the specific finding that nothing contained within this program imposes a new or increased impact fee under Florida Statutes §163.31801, the "Florida Impact Fee Act." The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 7th day of July, 2010.

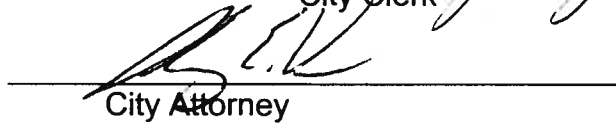
AUTHENTICATION: 

Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Nelson	Aye	Spear	Aye
McIntosh	Aye	Simons	Absent
Martin	Aye	Lonkart	Aye
Slachta	Aye		

Date Filed With City Clerk: 7-8-10