

| | |
|--|----|
| Chapter 2 Administration..... | 4 |
| Article I. In General | 4 |
| §2-1. Requests for an interpretation of a code provision..... | 4 |
| §2-2. Compliance agreements..... | 4 |
| §2-3--2-40. Reserved..... | 4 |
| Article II. Concurrency Management System..... | 5 |
| §2-41. Statutory authority..... | 5 |
| §2-42. Applicability Of Article..... | 5 |
| §2-43. Intent Of Article..... | 5 |
| §2-44. Purpose of article..... | 5 |
| §2-45. Reserved..... | 5 |
| §2-46. Concurrency certification..... | 5 |
| §2-47. Concurrent development orders..... | 10 |
| §2-48. Reserved..... | 11 |
| §2-49. Vested rights..... | 11 |
| §2-50. Concurrency management information system..... | 17 |
| §2-51. Variances..... | 17 |
| §2-52. Appeals..... | 18 |
| §2-53. Revocation of concurrency certificates..... | 19 |
| §2-54. Nonliability of The City Manager or designee..... | 19 |
| §2-55. Furnishing false information..... | 19 |
| §2-56--2-90. Reserved..... | 19 |
| Article III. Development Agreements..... | 19 |
| §2-91. Statutory authority..... | 19 |
| §2-92. Applicability of article..... | 19 |
| §2-93. Intent of article..... | 19 |
| §2-94. Purpose of article..... | 19 |
| §2-95. Reserved..... | 20 |
| §2-96. Applications for development agreements..... | 20 |
| §2-97. Minimum requirements of a statutory development agreement..... | 20 |
| §2-98. Notices and hearings..... | 20 |
| §2-99. Amendment or cancellation of development agreement by mutual consent..... | 20 |
| §2-100. Reservation of home rule authority..... | 21 |
| §2-101. Conflicts between development agreement and other land development regulations..... | 21 |
| §2-102. Appeals..... | 21 |
| §2-103--2-140. Reserved..... | 21 |
| Article IV. Transfer of Development Rights | 21 |
| §2-141. Purpose of article..... | 21 |
| §2-142. Applicability of article..... | 21 |
| §2-143. Reserved..... | 21 |
| §2-144. Administration of article..... | 21 |
| §2-145. Conflicting provisions..... | 21 |
| §2-146. Transfer of development rights concept; computation of units..... | 22 |
| §2-147. Transfer of Development Rights Limitations..... | 23 |
| §2-148--2-190. Reserved..... | 23 |
| Article V. Reserved..... | 23 |
| §2-191--2-230. Reserved..... | 23 |
| Article VI. Impact Fees..... | 23 |
| Division 1. Generally..... | 23 |
| §2-231--2-260. Reserved..... | 23 |
| Division 2. Roads Impact Fee..... | 23 |
| §2-261. Statutory authority..... | 23 |
| §2-262. Applicability of division..... | 23 |
| §2-263. Intent and purpose of division..... | 23 |
| §2-264. Rules of construction..... | 24 |
| §2-265. Imposition..... | 24 |
| §2-266. Computation of amount..... | 24 |

| | | |
|----------------|---|----|
| §2-267. | Payment..... | 28 |
| §2-268. | Benefit districts established..... | 28 |
| §2-269. | Trust funds-accounts..... | 28 |
| §2-270. | Use of funds..... | 28 |
| §2-271. | Refund of fees paid..... | 29 |
| §2-272. | Prepayment of fees..... | 29 |
| §2-273. | Deferral of fees..... | 30 |
| §2-274. | Exemptions..... | 30 |
| §2-275. | Credits..... | 31 |
| §2-276. | Appeals..... | 35 |
| §2-277. | Enforcement of division; penalty; furnishing false information..... | 35 |
| §2-278--2-300. | Reserved..... | 35 |
| Division 3. | Parks Impact Fee..... | 35 |
| §2-301. | Statutory authority..... | 35 |
| §2-302. | Applicability of division..... | 35 |
| §2-303. | Intent and purpose of division..... | 35 |
| §2-304. | Reserved..... | 35 |
| §2-305. | Imposition..... | 35 |
| §2-306. | Computation of amount..... | 36 |
| §2-307. | Payment..... | 36 |
| §2-308. | Benefit district established..... | 37 |
| §2-309. | Trust fund..... | 37 |
| §2-310. | Use of funds..... | 37 |
| §2-311. | Refund of fees paid..... | 37 |
| §2-312. | Prepayment of Fees..... | 38 |
| §2-313. | Exemptions..... | 38 |
| §2-314. | Credits..... | 39 |
| §2-315. | Appeals..... | 41 |
| §2-316. | Enforcement of division; penalty; furnishing false information..... | 42 |
| §2-317--2-340. | Reserved..... | 42 |
| Division 4. | Community Parks Impact Fee..... | 42 |
| §2-341. | Statutory authority..... | 42 |
| §2-342. | Applicability of division..... | 42 |
| §2-343. | Intent and purpose of division..... | 42 |
| §2-344. | Definitions..... | 42 |
| §2-345. | Imposition..... | 42 |
| §2-346. | Computation of amount..... | 42 |
| §2-347. | Payment..... | 43 |
| §2-348. | Benefit districts established..... | 43 |
| §2-349. | Trust funds..... | 44 |
| §2-350. | Use of funds..... | 44 |
| §2-351. | Refund of fees paid..... | 44 |
| §2-352. | Prepayment of fees..... | 45 |
| §2-353. | Exemptions..... | 45 |
| §2-354. | Credits..... | 46 |
| §2-355. | Appeals..... | 48 |
| §2-356. | Enforcement of division; penalty; furnishing false information..... | 49 |
| §2-357--2-380. | Reserved..... | 49 |
| Division 5. | Fire Protection And Emergency Medical Services Impact Fee..... | 49 |
| §2-381. | Statutory authority..... | 49 |
| §2-382. | Applicability Of The Division..... | 49 |
| §2-383. | Intent And Purpose Of Division..... | 49 |
| §2-384. | Reserved..... | 49 |
| §2-385. | Imposition..... | 49 |
| §2-386. | Computation of amount..... | 50 |
| §2-387. | Payment..... | 51 |
| §2-388. | Benefit districts established..... | 52 |
| §2-389. | Trust Funds..... | 52 |

| | | |
|-----------------|---|----|
| §2-390. | Use of Funds..... | 52 |
| §2-391. | Refund of fees paid..... | 52 |
| §2-392. | Prepayment of fees (Fire)..... | 52 |
| §2-393. | Deferral of fees..... | 53 |
| §2-394. | Exemptions..... | 53 |
| §2-395. | Credits..... | 54 |
| §2-396. | Appeals..... | 56 |
| §2-397. | Enforcement of Division; penalty; furnishing false information..... | 56 |
| §2-398--2-399. | Reserved..... | 57 |
| Division 6. | School Impact Fees..... | 57 |
| §2-400. | Statutory authority..... | 57 |
| §2-401. | Applicability of division..... | 57 |
| §2-402. | Intent and purpose of division..... | 57 |
| §2-403. | Imposition..... | 57 |
| §2-404. | Computation of amount..... | 57 |
| §2-405. | Independent fee calculation..... | 58 |
| §2-406. | Payment..... | 59 |
| §2-407. | Trust fund accounts..... | 60 |
| §2-408. | Use of funds..... | 60 |
| §2-409. | Refund of fees paid..... | 61 |
| §2-410. | Pre-payment of Fees..... | 61 |
| §2-411. | Exemptions..... | 61 |
| §2-412. | Credits..... | 62 |
| §2-413. | Appeals..... | 64 |
| §2-414. | Enforcement of division; penalty; furnishing false information..... | 64 |
| §2-415 - 2-419. | Reserved..... | 65 |
| Article VII. | Special Master..... | 65 |
| §2-420 | Special master proceedings under the Florida Land use Environmental Dispute Resolution Act..... | 65 |
| §2-421--2-429. | Reserved..... | 65 |
| Article VIII. | Private Property Rights Protection Act..... | 65 |
| §2-430. | Proceedings under the Bert J. Harris, Jr. Private Property Rights Protection Act..... | 65 |
| §2-431--2-439. | Reserved..... | 66 |
| Article IX. | Development Order Approval Process For Capital Improvements Projects..... | 66 |
| §2-440. | Applicability..... | 66 |
| §2-441. | Purpose and intent..... | 66 |
| §2-442. | Fee waiver..... | 66 |
| §2-443. | Procedures..... | 66 |
| §2-444. | CIP development order approval..... | 67 |
| §2-445. | Certificate of concurrency..... | 67 |
| §2-446. | Administrative deviations..... | 67 |
| §2-447. | CIP certificate of compliance..... | 67 |
| §2-448. | Filing and archiving..... | 67 |
| §2-449. | Compliance with this code..... | 67 |
| §2-450--2-460. | Reserved..... | 68 |
| Article X. | Hurricane Preparedness..... | 68 |
| §2-461. | Purpose And Intent..... | 68 |
| §2-462. | Applicability..... | 68 |
| §2-463. | Reserved..... | 68 |
| §2-464. | Determining impacts..... | 68 |
| §2-465. | Impact mitigation..... | 69 |
| §2-466. | Appeal..... | 72 |

CHAPTER 2 ADMINISTRATION
ARTICLE I. IN GENERAL

**§2-1. REQUESTS FOR AN
INTERPRETATION OF A CODE
PROVISION.**

Where a question arises as to the meaning or intent of a section or subsection of this Code, a written request stating the area of concern and the explicit interpretation requested may be submitted to the City Manager or designee.

- A. The City Manager or designee may render decisions of an administrative nature concerning items such as, but not limited to:
 - 1. The proper zoning classification for a use not specifically addressed;
 - 2. The manner in which the particular code provision is to be applied; and
 - 3. The procedure to be followed in unusual circumstances.
- B. If, in the opinion of the City Manager or designee, the interpretation involves a policy issue, the City Manager or designee will bring the item forward for City Council consideration on the agenda of a regularly scheduled meeting of the City Council.
 - 1. If the question involves clarification of the legislative intent of this Code, the City Council may render a decision as an administrative action item.
 - 2. Decisions involving policy issues or potential conflicts with the City of Bonita Springs Comprehensive Plan must be scheduled for a public hearing in accordance with Chapter 4 (Zoning) of this Code.
- C. Annotations of all decisions made by the City Manager or designee or City Council that may have an impact on future decisions will be periodically printed and made available to the general public.

§2-2. COMPLIANCE AGREEMENTS.

- A. *Authority.* The City Manager or designee has the authority to enter into compliance agreements to facilitate compliance with the terms and conditions of the Land

Development Code. Compliance agreements may be executed at the discretion of the City Manager or designee. However, the City is under no obligation to enter in a compliance agreement.

- B. *Purpose.* The purpose of the compliance agreement is to provide an alternative means to reach compliance with the terms of this Code in the event a violation is discovered.
- C. *Procedure.* Compliance agreements may only be entered into prior to the violator's receipt of a notice of hearing for Code Enforcement action before the City Hearing Examiner. The agreement must be in writing and executed in recordable form, after review and approval by the City Attorney or designee. At minimum, the agreement must specifically set forth the terms and obligations necessary to abate the violation. The agreement must also provide a specific abatement time frame and a fine that will be imposed for failure to meet the time frame. The City may, at its option, record the compliance agreement in the public records. If a copy of the agreement is recorded, the City will record a satisfaction or release of the agreement once the violation is deemed abated.

The parties must comply with all terms of the agreement, in the stated time frame, before the violation will be deemed abated. In the event the parties fail to comply with the terms of the agreement, the City may pursue code enforcement action. If the City pursues code enforcement action subsequent to the execution of the compliance agreement, the terms of the agreement will have no further effect on the parties and will not be binding on the Hearing Examiner.

- D. *Enforcement.* The terms and conditions of a compliance agreement may be enforced in a court of competent jurisdiction by injunction or an action for specific performance. In the event the parties execute, but do not perform all obligations under an agreement, the City may pursue Code Enforcement Hearing Examiner action in accordance with Article VII. The Hearing Examiner is not responsible for the enforcement of compliance agreement obligations.

§2-3--2-40. RESERVED.

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

§2-41. STATUTORY AUTHORITY.

The City Council has authority to adopt this Article pursuant to Article III of the Constitution of the State of Florida and Florida Statutes Chapters 163, 166 and 380.

§2-42. APPLICABILITY OF ARTICLE.

This Article applies to the incorporated area of the City.

§2-43. INTENT OF ARTICLE.

This Article is intended to implement the requirements imposed by Rule 9.J-5.0055, Florida Administrative Code; Objectives CIE 1.1 and 1.2 and Policies 1.2.2 and 1.2.3 through 1.2.9 of the City of Bonita Springs Comprehensive Plan; and Florida Statutes §§163.3177(10)(h), 163.3202(1) and (2)(g), 163.3167(8), and 163.3180

§2-44. PURPOSE OF ARTICLE.

The purpose of this Article is to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development by providing that certain public facilities and services meet or exceed the standards established in the Capital Improvements Element in the City of Bonita Springs Comprehensive Plan and required by Florida Statutes §163.3177 and 163.3180, and are available when needed for the development, while protecting the vested rights of persons guaranteed them by the Constitution of the United States of America, the state constitution and the laws of the state, and acknowledged by the state legislature in Florida Statutes §163.3167(8).

§2-45. RESERVED.

§2-46. CONCURRENCY CERTIFICATION.

A. *Review for compliance with level of service requirements.* All applications for final development orders and building permits must be reviewed by the City Manager or designee for compliance with the level of service requirements set forth in the City of Bonita Springs Comprehensive Plan. Exceptions to

this provision are development permits that are:

1. Specifically exempted from concurrency review by City Administrative Code.
2. Granted pursuant to a concurrency variance certificate under Section 2-49 of this Code;
3. A concurrency exemption certificate applies under Section 2-49 of this Code;
4. Related to development pursuant to a development order issued under Florida Statutes §§380.06 and 380.061, and the DRI development order separately provides for concurrency compliance and analysis; or
5. Granted pursuant to a developer agreement in effect, and the development agreement makes separate provision for concurrency compliance and analysis.

Upon application and payment of the application fee set by the City Council by resolution, the City Manager or designee will determine whether the public facilities and services listed in Florida Statutes §163.3180 needed to support the development will be available concurrent with the impacts of that development, or whether the development should be exempted from such a determination, either because the development will not have an impact on the public facilities and services or because the applicant for the development permit has a vested right to receive it.

- B. *Determination of exemption.* Certain types of development permits do not cause additional impacts on public facilities and services. These development permits should be exempt from concurrency compliance. Those development permits are set forth in an Administrative Code. It is not necessary for the City Manager or designee to issue a certificate of exemption for development permits listed in the Administrative Code. For development permits not listed in the Administrative Code, the City Manager or designee will be guided by the standards set forth in this Article. If the City Manager or designee finds that the standards for exemption have been satisfied, he will certify

his findings by a written statement that identifies the development permit for which the specific determination of exemption has been made. The City Manager's or designee's statement must recite the basis for his determination by reference to the facts upon which he is relying and the sections of this Article he finds to be controlling. The City Manager's or designee's statement will be known as a Certificate of Concurrency Exemption, will identify a Development Order or will be limited to the exact Development Permit application for which he has issued his certificate. Applications for an amendment to a Development Order granting a Development Permit for which a Certificate of Concurrency Exemption has been issued will require another, separate concurrency review by the City Manager or designee.

- C. *Consideration of impacts.* If the City Manager or designee determines that a Development Permit is not exempt from the minimum concurrency requirements of the City of Bonita Springs Comprehensive Plan, the City Manager or designee will consider the impact the development will have on potable water, sanitary sewer, surface water management, solid waste disposal, parks and recreation and roadway facilities. The City Manager or designee will consider the type and intensity of use of the proposed development in relation to the demands and intensity of the use can reasonably be expected to make on those facilities and the times when the demand can reasonably be expected to occur during the course of the development. When measuring the expected impacts of a development, the City Manager or designee will include only the impacts of permanent traffic (see definitions) and other similar continuing infrastructure demands of the development. The City Manager or designee will disregard temporary impacts such as fire flow tests. The City Manager or designee may rely upon studies, measurements or calculations prepared by qualified professionals, or upon generally accepted guidelines, rules, formulas, studies or other theories developed by professional experts working or publishing in this field of inquiry, or upon relevant historical trends or experiences, or upon related rules and standards adopted by other

governmental agencies, or upon any combination of these sources. The burden of disproving the accuracy of the City Manager's or designee's determination lies with the person who disputes it.

To promote uniformity in the application of this Subsection, the City Manager or designee may prepare administrative rules prescribing the methodology by which the impacts of a proposed development will be determined. Those rules will be set forth in an Administrative Code adopted by the City Council.

- D. *Determination of sufficient capacity.* Once the City Manager or designee has considered the impacts of a proposed development in accordance with subsection (C) of this Section, he will then determine whether there will be sufficient capacity for these facilities to serve the development at the time the impacts of the development will occur without causing these facilities and services to function at a level of service below the minimum regulatory levels established for these facilities and services in the City of Bonita Springs Comprehensive Plan. Except for traffic impacts, which will be determined in accordance with the appropriate policies of the City of Bonita Springs Comprehensive Plan, the City Manager or designee will add the expected impacts of the development to the levels of use of the facility at the time of the determination. Anticipated additional use will be derived from other reasonably foreseeable factors. If this sum is less than the capacity of the facility in question to operate during the effective period of a certificate of concurrency compliance at the minimum regulatory levels of services prescribed in the City of Bonita Springs Comprehensive Plan and the development's projected traffic is in compliance with the appropriate policies of the City of Bonita Springs Comprehensive Plan, the City Manager or designee will certify the conclusion by a written statement. The written statement will identify the development in question and the development permit for which the certification has been made. The City Manager's or designee's statement will be known as a Certificate of Concurrency Compliance and is limited to the exact Development Permit Application for

which he has issued his certificate. Applications for an amendment to a Development order granting a development permit for which a certificate of concurrency compliance has been issued will require another, separate Concurrency Review by the City Manager or designee.

E. *Means of measuring level of service in relation to location of development.* When measuring the availability of a public facility to serve a development, the level of service at which the facility is operating or is expected to operate will be measured in relation to its location to the development as follows:

1. *Potable water.* Supply and treatment capacity will be based on the number of equivalent residential connections of the utility that will provide service to the development. The pressure in the distribution system will be measured at the point where the service enters the development or at the point from which the service will be extended.
2. *Sanitary sewer.* The treatment and disposal capacity will be based on the number of equivalent residential connections of the utility that will provide service to the development. The capacity of the collection system will be measured at the point where the service enters the development or at the point from which the service will be extended.
3. *Surface water management.* Runoff capacity for new development is required to meet drainage requirements of the South Florida Water Management District (SFWMD). For purposes of this Article, the adequacy of a surface water management system shall be conclusively demonstrated upon the issuance of a SFWMD surface water construction permit, or if a project is exempted from SFWMD permits, equivalent approval under Chapter 3 (Design Standards) of this Code.
4. *Solid waste disposal.* Capacity of the disposal facility will be measured in pounds (or equivalent volume) and applied citywide.

5. *Parks and recreation.* The quantity of parks will be measured in acres and applied to the total permanent and seasonal resident population in the City. [Parks and Receptions impact language may change due to Duncan Study.]

6. *Roads.* Concurrency on all roads will be determined on a roadway segment-by-segment basis consistent with the level of service standards set forth in the City of Bonita Springs Comprehensive Plan Policy CIE 1.1.3 except where the City Council has designated constrained roads and created transportation concurrency management areas, transportation concurrency exception areas, or long-term transportation management systems pursuant to Florida Administrative Code 9J-5.0055.

F. *Determination of capacity of potable water, sanitary sewer or solid waste facilities.* In determining the capacity of potable water, sanitary sewer or solid waste facilities, the City Manager or designee must include the capacity of all facilities as they exist at the time the development permit will be issued, plus other facilities that are guaranteed in an enforceable development agreement. An enforceable development agreement may include but is not limited to development agreements pursuant to Florida Statutes §163.3220, or an agreement or development order issued pursuant to Florida Statutes Chapter 380. The City Manager or designee, in accordance with Section 2-46(J) of this Code, is also authorized to issue certificates of concurrency compliance subject to the condition that at the time of issuance of a certificate of occupancy, the necessary facilities must be in place and available to serve the new development.

G. *Determination of adequacy of surface water management system.* In determining the adequacy of a surface water management system, the City Manager or designee will rely upon the reviews performed by the City staff and/or designee and the South Florida Water Management District. The adequacy of a surface water management system will be conclusively demonstrated upon the issuance of a surface water construction and operating

permit by the South Florida Water Management District.

H. For parks and recreation facilities, the development must meet one of the following two standards:

1. At the time of development order or permit is issued, the necessary facilities and services must be in place or under actual construction; or
2. A development order or permit is issued with a stipulation that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new development is dedicated to or acquired by the local government; and
 - a. The necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted City of Bonita Springs five-year schedule of capital improvements; or
 - b. At the time the development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement that requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent; or
 - c. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to Florida Statutes §163.3220, or an agreement or a development order issued pursuant to Florida Statutes Chapter 380, to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent.

I. *Determination of road facility capacity.* In determining the capacity of a road facility, the City Manager or designee will include existing roadways and committed improvements, as provided in the City of Bonita Springs Comprehensive Plan.

J. *Issuance of finding upon failure to qualify for certificate of concurrency compliance.*

1. If a proposed development permit fails to qualify for a certificate of concurrency compliance under the criteria set forth in subsections (A) through (I) of this Section, the City Manager or designee nevertheless will issue a finding that the proposed development will meet concurrency requirements if it is subject to the condition that the facilities and services which will be necessary to serve the development, will be in place when the impacts of the development occur, without degrading the level of service of these facilities below the minimum level prescribed in the City of Bonita Springs Comprehensive Plan. When no solution can be identified to provide for the additional facility capacity required, the certificate will either be limited to reflect the then-available facility capacity, or the application denied. If the City Manager or designee issues such a finding, to be known as a conditional certificate of concurrency compliance, no development permit may be issued unless it contains on its face the statement that the permit is issued subject to the condition that additional facilities to serve the development must be in place when the impacts of the development occur.
2. The conditional certificate of concurrency compliance must identify the minimum additions to the then-existing facilities that must be built and operating, in addition to planned facilities meeting the criteria set forth in subsections (F), (G), (H) and (I) of this Section, before further development permits will be issued. If a developer proposes to develop in stages or phases so that facilities and services needed for each phase will be available in accordance with the standards set forth in this Article, the City Manager or designee

- may issue a conditional certificate of concurrency compliance that establishes related periods of time when additional development permits will be granted if the additional facilities, identified by the City Manager or designee as being the minimum additions to existing or planned facilities needed to serve each phase, are built and operating.
3. Development permits issued based on conditional certificates of concurrency compliance must specify the next level or levels of permitting that may be granted before the condition or conditions of the permit must be satisfied.
 4. The City Manager or designee may also issue a conditional certificate of concurrency compliance where the proposed development will meet concurrency requirements provided certain documents, not submitted with the initial application, are subsequently delivered to the City Manager or designee, or the proposed final development order is subject to the review of other agencies and therefore likely to change, thereby requiring further concurrency review.
- K. *Validity of certificates of concurrency compliance and conditional certificates of concurrency compliance.* Certificates of concurrency compliance and conditional certificates of concurrency compliance are valid for three years from the date they are issued or for the remaining tenure of the underlying final development order or development permit, whichever is less.
- L. *Validity of development permits.*
1. Except for building permits, development permits which have been issued based upon a valid certificate of concurrency compliance or a conditional certificate of concurrency compliance will be valid for a period of three years from the date the certificate was granted or for the normal duration of the development permit, whichever is less. This will enable the developer to begin the work permitted or to apply for additional development permits not inconsistent with the permit issued, using the concurrency certificate from the issued permit to satisfy the concurrency review requirements for the additional permits. Approval by the City Council of an extension to the term of a development permit, other than a building permit, will automatically constitute the issuance or extension, as the case may be, of a concurrency certificate for three years or the period of the extension, whichever is less.
 2. Building permits issued based upon a valid concurrency certificate will be valid for the normal duration of the building permit, so long as the permit is applied for while the certificate of concurrency compliance or conditional certificate of concurrency compliance is valid, the permit application is substantially complete, and the building permit is ultimately issued in the normal course. The original permit may not be extended more than twice without triggering new concurrency review.
 3. If a building permit for which such an application has been filed is not issued within six months of the expiration date of the applicable concurrency certificate, a rebuttable presumption will arise that the building permit has not been issued within the normal course as that term is used in this subsection.
- M. *The City Manager's or designee's action not appealable pursuant to state law.* The City Manager's or designee's action in issuing a concurrency certificate, is not a development order which can be appealed pursuant to Florida Statutes §163.3215.
- N. *Requirements for activity affecting constrained roads.* Concurrency compliance for land development activity affecting constrained roads will be determined in accordance with the City of Bonita Springs Comprehensive Plan objective CIE 1.2 to the extent these policies provide additional restrictions that supplement other provisions of this Article. The requirements of these policies are as follows:
1. A maximum volume to capacity (v/c) ratio of 1.85 for all constrained roads.

2. The City Manager or designee may not issue permits that cause the maximum volume to capacity ratio to be exceeded or that affect the maximum volume to capacity ratio once exceeded.
3. Once the maximum volume to capacity ratio is achieved, permits may only be issued where capacity enhancements and operational improvements have been identified and commitments to implement those improvements are made that will maintain the volume to capacity ratio on the constrained segment at or below 1.85.

§2-47. CONCURRENT DEVELOPMENT ORDERS.

- A. *Final development orders and amendments or extensions thereto.* A request or application for a final development order, an amendment to a final development order or an extension of a final development order may be accepted by the City Manager or designee, the hearing examiner or the City Council prior to issuance of a valid concurrency certificate for the exact plan of development for which approval is sought. However, no final development order, final development order amendment or final development order extension may be granted for a development that will cause more intensive impacts than those assumed by the City Manager or designee when issuing his concurrency certificate unless the development in question is resubmitted for review for compliance with the level of service requirements of the City of Bonita Springs Comprehensive Plan. If an amendment to a final development order, already approved for concurrency purposes, results in a reduction of anticipated impacts on public facilities and services, the City Manager or designee must approve the amendment unless to do so would be inconsistent with the City of Bonita Springs Comprehensive Plan.
- B. *Building permits and mobile home permits.* The City Manager or designee may not accept or approve application for a building permit or mobile home move-on permit unless it is exempt from the requirements of this Article set forth in Section 2-46(B) of this Code or accompanied by a valid concurrency

certificate issued specifically for the structure for which permit approval is sought. Building permits or mobile home move-on permits will not be granted for structures that will cause more intensive impacts than those assumed by the City Manager or designee when issuing his concurrency certificate.

- C. *Subdivision plats.* An application for approval of a plat prepared in accordance with Florida Statutes Chapter 177 may be accepted by the City Manager or designee, but may not be approved by the City Council unless it is accompanied by a valid concurrency certificate issued specifically for the exact plan of development for which approval is sought. No plat may be approved for a development that would cause more intensive impacts than those assumed by the City Manager or designee when issuing his concurrency certificate.
- D. *Other development permits.* No other development order may be issued by the City Manager or designee, or by any other city official, for a development permit not included in subsections (A) through (C) of this Section, when the order would permit an impact on facilities and services for which level of service standards have been adopted in the City of Bonita Springs Comprehensive Plan, unless the City Manager or designee has first issued a valid concurrency certificate.
- E. *Review of planned development rezoning applications.* In addition to the mandatory provisions of this Article, the City Manager or designee is authorized at the request of the applicant, to review planned development rezoning applications. In those cases where the City Manager or designee has determined that an approval could lead to excessive impacts on public facilities and services needed to support the development, he may issue an advisory opinion setting forth the basis of his determination. Approvals of a development application subject to such an advisory opinion must contain conditions to mitigate the identified impacts. Those conditions may include reduction of density or intensity, phasing of the project to match its impacts with planned expansion of public facilities, required improvements to public facilities or other similar mitigating measures.

- F. *Developments of Regional Impact.* Application for final local development orders on property located within a development of regional impact are subject to the concurrency levels of service requirements of the City of Bonita Springs Comprehensive Plan unless the DRI is vested pursuant to definitions found in Chapter 9 (Definitions) of this Code.

§2-48. RESERVED.

§2-49. VESTED RIGHTS.

- A. No person has a vested right, by virtue of a development order issued on or after November 25, 2002, to receive a subsequent development order where the development permitted by the subsequent order would have an impact on the public facilities and services listed in Florida Statutes §163.3180(1), and for which regulatory levels of service are established in the Bonita Springs Comprehensive Plan.
- B. Upon adoption of the City of Bonita Springs Comprehensive Plan (“Comp Plan” or “Plan”), all development and all actions taken in regard to development orders shall be consistent with the Plan as adopted. All land development regulations enacted or amended after the effective date of the Comprehensive Plan shall be consistent with the Comprehensive Plan, except that the Bonita Springs City Council may, in its sole discretion, permit development with a greater density for projects that were submitted and under review prior to October 16, 2002, if such density was permitted under the Lee Plan and only if similar and compatible to the adjoining property. Land development regulations in existence as of the effective date of the Comprehensive Plan that are inconsistent with the Comprehensive Plan shall be amended through the public hearing process to conform to the goals, objectives, and policies of the Comprehensive Plan.
- C. Notwithstanding any other provision of the City of the Bonita Springs Comprehensive Plan, an application for a development approval may be approved if an applicant has demonstrated development rights that are vested under the standards of this Section. Persons or entities whose interests are directly

affected by the City of Bonita Springs Comprehensive Plan have the right to request an administrative interpretation of the Plan as it affects their specific interest. Applicants must seek administrative relief by first requesting the City of Bonita Springs to grant an administrative interpretation of the Plan before they may file an action in a court of competent jurisdiction.

- D. Such an interpretation, under the procedures and standards set forth below, shall thereafter be binding on the City of Bonita Springs and the person or entity, their heirs, assigns and any subsequent successors. Such administrative interpretations are intended to expedite and reduce disputes over Plan interpretations, provide predictability in Plan interpretations, resolve certain map or boundary disputes, and avoid unnecessary litigation. Once rendered, an administrative interpretation may be challenged by the filing of a Petition for Writ of Certiorari in Circuit Court.

1. *Subject Matter of Administrative Interpretations*

Administrative interpretations shall be provided only as to the matters set forth below. In no event shall administrative interpretations hereunder involve questions of the consistency of development or land use regulations with the Comprehensive Plan. Administrative interpretations shall be limited to:

- a. Whether the single-family residence provision as hereinafter defined applies and the applicant desires a written opinion for future use, or with a concurrent building permit application.
- b. Whether an area has been (or should have been) designated Wetlands on the basis of a clear factual error. A field check shall be made prior to the issuance of such an interpretation
- c. Clarification of future land use map boundaries as to a specific parcel of property.
- d. Conflicts between existing land development approvals and the City

of Bonita Springs Comprehensive Plan. Florida Statutes §163.3167(8) recognizes the vested status of Development of Regional Impacts, or local development orders where the development has commenced and is developing in good faith. Florida Statutes §163.3164 defines a development order as any order which approves, or conditionally approves an application for a development permit. A development permit includes any building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. No application for administrative determination is required for developers of Developments of Regional Impact that are developing in accordance with an approved Development of Regional Impact development order or related development orders and permits, as they are deemed consistent with the City of Bonita Springs Comprehensive Plan, except for vested rights determinations of buildings that exceed 75 feet in height.

- e. Within 365 days from adoption of the Comprehensive Plan, any legal owner, or beneficial owner with the authorization of the legal owner, whose interest is directly affected by the Comprehensive Plan provisions, and owners and developers adversely affected by the City of Bonita Springs Comprehensive Plan limitation on the height of buildings to 75 feet above flood elevation must apply for an administrative interpretation that their proposed structure is vested in accordance with the standards for administrative interpretations as set forth below. The duration for vesting of any structures under this provision is limited to the life of the Development of Regional Impact development order or any local

development order or development approval, or any extension thereto. An application for a determination of vested rights with respect to the 75 foot height limitation shall be filed on or before November 25, 2003 or the alleged vested right shall be deemed abandoned. Notwithstanding, all other vested rights applications may be filed at any time.

2. *Procedures for Administrative Interpretations*

Anyone seeking an administrative interpretation shall submit an application to the City. The City Manager or designee, will issue administrative interpretations for applications pursuant to Section (A) above, except that the City Attorney or designee shall issue administrative interpretations for (1) single-family provisions for future use or a concurrent building permit application was not approved by the City Manager or designee and (2) vested rights determination of any existing land development approvals or limitations including vested rights to construct building that exceed 75 feet in height above flood elevation. The application shall include all the information necessary to support the request. The applicant has the burden of demonstrating that the application is appropriate as to Section (A) above, and that it meets the standards set forth in Section (C) below. The City Attorney or designee, or the City Manager or designee, whichever is applicable, will review each application, and issue a written administrative interpretation, which may be appealed by the applicant to City Council.

3. *Standards for Administrative Interpretations*

In making the proposed determination, the City will consider, in furtherance of the guidelines contained in the City of Bonita Springs Comprehensive Plan, the following criteria:

- a. Wetland designations, and map boundaries: Is there a clear factual error or discrepancy?
- b. Single-family residence provision
 - i. Applicability

Notwithstanding any other provision of the City of Bonita Springs Comprehensive Plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of the City of Bonita Springs Comprehensive Plan, shall be allowed to construct one single-family residence on said property PROVIDED THAT:

(1) Date Created:

- (a) The lot or parcel shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the original Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR
- (b) A legal description of the lot or parcel was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR
- (c) The lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the said Comprehensive Plan, as it existed at that time.

(2) Minimum Lot Requirements:
In addition to meeting the

requirements set forth above, the lot or parcel shall:

- (a) Have a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR
- (b) Have a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR
- (c) Have a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR
- (d) Have been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR
- (e) Have been approved as part of a Planned Unit Development or Planned Development.

(3) Access and Drainage: In addition to meeting the requirements set forth above:

- (a) The road that the lot or parcel fronts on must have been constructed and the lot shall be served by drainage swales or equivalent drainage measures. The road must have, at a minimum, a graded surface of shell, marl, gravel base rock, or other

compacted fill material, suitable for year-round use; OR

- (b) The lot or parcel must be located within a subdivision that was approved under Florida Statutes Chapter 177, as long as the subdivision improvements have been made or security for their completion has been posted by the subdivider.

If the lot or parcel cannot meet the requirement of access and drainage, this requirement shall not apply to the extent that it may result in an unconstitutional taking of land without due process.

- (i) Construction Regulations

Subsequent to a property owner establishing the right to build a single-family residence on a lot through the procedures set forth in this Plan, the following policies shall prevail:

- a. The residential structure shall be in compliance with all applicable health, safety, and welfare regulations, as those regulations exist at the time the application for construction of residence is submitted.

- b. Lots or parcels which qualify for the right to construct a residence and which contain wetlands shall be subject to special provisions of the Wetlands Protection Ordinance.
- c. If two or more contiguous lots or parcels have each qualified for the right to build a single-family residence, the property owner is permitted and encouraged to reapportion properties if the result of the reapportionment is a lot or lots which come closer to meeting the property development regulation standards for the zoning district in which it is located and as long as no property becomes non-conforming or increases in its non-conformity as a result of the reapportionment and as long as the density will not increase.
- d. If a lot or parcel has qualified for

- the right to construct a single-family residence, nothing herein shall be interpreted as prohibiting the combining of said lot or parcel with other contiguous property provided the density will not increase.
- e. If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots or parcels are located in a zoning district which permits duplex or two-family dwellings, the property owner(s) may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.
- f. Transferability: This right shall run with the land and be available to any subsequent owner if the property that qualifies for the single-family provision is transferred in its entirety.
- c. Vested rights clarification of any existing land development approvals or limitations to the height of buildings to 75 feet above flood elevation.
- i. The vested rights determination shall be limited to rights acquired prior to adoption of the Comprehensive Plan or amendment thereto and shall vest only that development specifically and expressly contemplated by the valid “official act” of the City. An “official act” of the City shall include official acts of the City’s predecessor, Lee County. An official act includes, but is not limited to the issuance of any development order or development permit as defined by Florida Statutes §163.3164.
- ii. The applicant shall have the burden of proof, by a preponderance of the evidence, to demonstrate that he meets the standards of (1), or in the alternative, meets the standards of (2), (3) and (4) below.
- (1) There is an “official act” (as enumerated below) of the City or its predecessor, Lee County. Any one of the following may constitute an “official act” of the City or Lee County for purposes of the vested rights determination:
- (a) A building permit issued prior to the effective date of the Comprehensive Plan or land development regulations in effect at the time of filing of the vested rights application; or,

- (b) One or more development permits, as defined by Florida Statutes §163.3164, or approvals for development issued by the City or Lee County; or
 - (c) A subdivision plat recorded in the official records of Lee County, which fulfills the criteria set forth in Florida Statutes §380.05(18), is an “official act.”
- (2) This particular applicant:
- (a) Relied upon the official act in “good faith” (For example, the applicant must not have had notice or knowledge of a pending change in zoning, allowable uses or density, etc., such as if notice of the change was published, or there are active and documented efforts to develop and approve the proposed change at the time the property was purchased or expenses were incurred); and
 - (b) Had a reliance that was “reasonable” (for example, an act of purchasing the property, entering into contracts or incurring additional obligations after the transmitted Comprehensive Plan was or became effective does not constitute reasonable reliance.)
- (3) This particular applicant incurred such substantial obligations and expenditures that it would be highly inequitable or unjust to
- require that the development conform with the Comprehensive Plan in effect at the time of the filing of the vested rights application; and
- (4) Development of the project for which the applicant seeks a vested rights determination has made a substantial change in position in good faith.
- d. Where appropriate and necessary, administrative interpretations of wetland determinations and map boundary determinations shall be incorporated into the Plan during the next amendment cycle.
4. *Limitations on vested rights determinations.*
- a. In furtherance of those guidelines listed in the City of Bonita Springs Comprehensive Plan, a proposed vested rights determination shall also contain the following:
 - i. A finding that the applicant has met the burden of proof for the vested rights determination; and
 - ii. A clear statement to specify the applicant’s vested development rights; and
 - iii. A clear statement to the applicant that construction, when commenced, must continue in good faith.
 - iv. A vested rights determination is limited to the life of the Development of Regional Impact, or other local development order or development permit, or any extension thereto.
 - b. The vested rights determination shall be limited to rights acquired prior to adoption of the City of Bonita Springs Comprehensive Plan. The vested rights determination shall vest only that development specifically and expressly permitted by the

“official act” of the City Council, Lee County or their staff.

5. *Appeals of Administrative Interpretations*

The following procedures shall apply in appealing administrative interpretations:

- a. An administrative interpretation may be appealed to the City Council by filing a written request within fifteen (15) days after receipt of the written administrative interpretation, which shall be sent to the applicant by certified mail return receipt requested.
- b. The City Council shall conduct a hearing to be held within thirty (30) days after the date of receipt of a written request for an appeal. No additional evidence shall be considered by the City Council, other than what is provided in the record. The Council may adopt, overturn, or amend the administrative interpretation based on the standards set forth herein. City Council must render a written decision within thirty (30) days of the hearing.
- c. All appeals from the action of the City Council shall be to Circuit Court. The appeal must be filed within forty-five (45) days after the written decision is rendered by the City Council.

Prior to filing any claims under the Bert J. Harris, Jr., Private Property Rights Protection Act, an applicant must exhaust his or her administrative remedies under this Administrative section before a cause of action or “action of a governmental entity” will accrue or be deemed ripe. Such exhaustion shall not include a filing of an appeal or a Petition for Writ of Certiorari in Circuit Court.

§2-50. CONCURRENCY MANAGEMENT INFORMATION SYSTEM.

- A. The City Manager or designee will compile, publish and update, at least once each year, beginning no later than **October 1, 1990**, an inventory of the maximum, utilized and available capacity of public facilities for

which minimum regulatory levels of service are prescribed in the City of Bonita Springs Comprehensive Plan. This inventory must also contain a projection of future demand on the facilities due to anticipated growth and additions to capacity based upon construction in progress or under contract. The inventory must be reviewed and approved by the City Council and, upon approval, will establish the availability and capacity of each facility to accommodate impacts from further development. This inventory will bind the City to the estimates of available capacity described in the inventory. Once approved by the Council, these estimates will empower the City Manager or designee to issue concurrency certificates for development permits requested where the estimates reasonably demonstrate sufficient infrastructure capacity will be available to serve all developments reasonably expected to occur during the period of time approved by the Council.

- B. The City Manger or designee will maintain a current cumulative list of all development orders issued by the City. The list will include the date of issuance of each development order.
- C. The City Manager or designee will maintain a list of all certificates issued pursuant to this Article, or a copy of each certificate in chronological order by date of issuance in lieu of a list. These records may be removed to storage once the most recent certificate on the list is six months old.

§2-51. VARIANCES.

- A. To provide for a reasonable economic use of land in those rare instances where a strict application of the concurrency requirements of this Article would constitute an unconstitutional taking of property without due process of law, the City Manager or designee may issue a Concurrency Variance Certificate. This Certificate may be issued only if the City Manager or designee finds all of the following circumstances to be true:
 1. There are not sufficient facilities available to serve the development without violating the minimum concurrency requirements of this Article;

2. No reasonable economic use can be made of the property unless a development permit issued;
3. No reasonable economic use can be made of the property by conditioning the development permit upon sufficient facilities becoming available, as provided for in this Article; and
4. The request to vary from the concurrency requirements of this Article is the minimum variance that would allow any reasonable economic use of the property in question.

The City Manager or designee may require the applicant to substantiate the circumstances set forth in subsections (A)(2) through (4) of this Section by submitting a report prepared by a professional appraiser. Upon verifying the existence of each of the circumstances set forth in subsections (A)(2) through (4) of this Section, the City Manager or designee may issue a Concurrency Variance Certificate with the conditions he believes are reasonably necessary to protect the public health, safety and welfare and give effect to the purpose of this Article while allowing the minimum reasonable use necessary to meet constitutional requirements. If the City Manager or designee has reason to question the truth of the circumstances as set forth in the appraiser's report, the City Manager or designee may hire an independent professional appraiser to verify whether reasonable economic use can be made of the property without the issuance of the permit requested by the applicant. Where the reports of the individual appraisers are inconsistent, the City Council will decide which appraiser's report will establish the minimum reasonable use of the property.

- B. Development orders that are issued based upon a Concurrency Variance Certificate shall be consistent with, and incorporate all of the conditions placed on the certificate.
- C. Concurrency Variance Certificates are valid for the lesser of three years from the date of issuance or the normal duration of the development permit.
- D. Except for building permits, development permits which have been issued based upon a

valid Concurrency Variance Certificate shall be valid for the period of three years from the date when the permit is granted or the normal duration of the development permit, whichever is less, thereby enabling the developer to begin the work permitted or to apply for additional development permits not inconsistent with the permit issued, using the concurrency certificate from the issued permit to satisfy the concurrency review requirements for such additional permits.

Building permits issued based upon a valid Concurrency Variance Certificate are valid for the normal duration of the building permit; however, the original permit may not be extended more than twice without triggering new concurrency review.

- E. The City Manager or designee's action in issuing a Concurrency Variance Certificate, is not a development order that can be appealed pursuant to Florida Statutes §163.3125.

§2-52. APPEALS.

Except for challenges to development orders controlled by the provisions of Florida Statutes §163.3215, any decision made by the City Manager or designee in the course of administering this Article may be appealed in accordance with those procedures set forth in **Chapter 4** (zoning) of this Code. for appeals of administrative decisions. In cases of challenges to development orders controlled by Florida Statutes §163.3215, no suit may be brought and no verified complaint, as explained in Florida Statutes §163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the City Manager or designee or by virtue of its having been ordered by the City hearing examiner on an appeal reversing the City Manager or designee denial of the development permit, or by the City Council in cases where the City has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of Florida Statutes §163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in Florida Statutes §163.3164(6), when the approval of the development order is alleged to be inconsistent with the City of Bonita Springs

Comprehensive Plan. Action brought pursuant to Florida Statutes §163.3215 will be limited exclusively to the issue of comprehensive plan consistency.

§2-53. REVOCATION OF CONCURRENCY CERTIFICATES.

The City Manager or designee may revoke a concurrency certificate for cause where a certificate has been issued based on substantially inaccurate information supplied by the applicant, or where revocation of the certificate is essential to the health, safety or welfare of the public.

§2-54. NONLIABILITY OF THE CITY MANAGER OR DESIGNEE.

The City Manager or designee will not be held personally liable for incorrect decisions in administering this Article. The City will, at its cost, defend the City Manager or designee in any action involving such decisions and will indemnify the City Manager or designee for any personal judgments that may be rendered against him.

§2-55. FURNISHING FALSE INFORMATION.

Knowingly furnishing false information to the City Manager or designee, or any City official, on matters relating to the administration of this Article will be punishable in accordance with Section 1-5 of this Code.

§2-56--2-90. RESERVED.

ARTICLE III. DEVELOPMENT AGREEMENTS

§2-91. STATUTORY AUTHORITY.

The City Council has the authority to adopt this Article pursuant to Article VIII, Section 1(f), of the constitution of the state and Florida Statutes §125.01, 163.3220(5) and 163.3223.

§2-92. APPLICABILITY OF ARTICLE.

This Article shall apply to the incorporated area of the City.

§2-93. INTENT OF ARTICLE.

This Article is intended to enable the City to invoke the provisions of the Florida Local Government Development Agreement Act while retaining all of the home rule authority given it pursuant to Article VIII of the constitution of the state and Florida Statutes Chapters 163, 166, and 380, to enter into other similar agreements beyond the provisions of the Florida Local Government Development Agreement Act, and to establish specific notice and hearing procedures when it makes certain such similar agreements pursuant to its home rule authority.

§2-94. PURPOSE OF ARTICLE.

- A. The purpose of this Article is to invoke the authority recognized in the City by the state in Florida Statutes §163.3223, to enter into development agreements with any and all persons having legal or equitable interests in real property located in the incorporated area of the City pursuant to the provisions of the Florida Local Government Development Agreement Act. Vendees under a specifically enforceable contract for the sale of real property shall be recognized as having a sufficient equitable interest so as to have legal capacity to become a party to a development agreement made pursuant to the Florida Local Development Agreement Act, but persons having only a mere option to purchase real property shall not be so recognized.
- B. It is also the purpose of this Article to establish notice and hearing procedures similar to those set forth in the Florida Local Development Agreement Act when the City makes agreements pursuant to its home rule authority in those types of agreements which are defined in this Article as home rule development agreements. Development agreements made pursuant to this Article, whether they are home rule development agreements as defined in this Article or agreements made pursuant to the Florida Local Government Development Agreement Act, are intended to protect and further the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services which

are related to and consistent with the City's capital improvement planning and financing.

§2-95. RESERVED.

§2-96. APPLICATIONS FOR DEVELOPMENT AGREEMENTS.

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the City Council shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application. Unless otherwise provided by administrative code, development agreements shall be considered by the City Council only upon the recommendation of the City Manager or designee, who may submit a proposed development agreement, in written form, for consideration by the Council pursuant to the public hearing requirements of Florida Statutes §163.3225 and §2-98. Each such proposed development agreement so submitted shall include the City Manager's or designee's recommendation as to whether the Council should become or decline to become a party to the agreement, or a modified form of the agreement, with such information as the City Manager or designee deems necessary to support his recommendation.

§2-97. MINIMUM REQUIREMENTS OF A STATUTORY DEVELOPMENT AGREEMENT.

Statutory development agreements shall include, at a minimum, all of the items enumerated in Florida Statutes §163.3227, plus such conditions, terms, restrictions or other requirements which the parties to the agreement may desire to include and which are not otherwise prohibited by law or which exceed the authority of the parties. If a statutory development agreement provides that any public facilities are to be designed or constructed by the developer, then the agreement shall require that the design and construction be in compliance with all applicable federal, state, county, and city standards and requirements, including but not to be limited to guarantees of performance and quality and project controls, including scheduling, quality and quality

assurance. When public facilities are to be designed or constructed by the developer, or when the developer agrees to dedicate land to the City, the statutory development agreement shall specifically state the extent to which such design or construction or dedication shall be eligible for impact fee credits pursuant to such impact fee ordinances as the City may have in effect at the time when the statutory development agreement is to become effective. Statutory development agreements also shall incorporate the administrative appeal process set forth in Section 2-102 of this Code.

§2-98. NOTICES AND HEARINGS.

No statutory development agreement shall be made pursuant to this Article unless and until all of the requirements of Florida Statutes §163.3225 relating to the agreement have been satisfied. To that end, an affected property owner, as the term is used in Florida Statutes §163.3225, means all owners of property, as reflected on the current year's tax roll, lying within 375 feet in every direction of the subject property. The City Council, by adopting an appropriate administrative code, may prescribe more stringent notice requirements. In addition, if a statutory development agreement is intended to rezone property, grant variances or accomplish any other approval which otherwise would be controlled by Chapter 4 (zoning) of this Code, the notices required in Chapter 4 (zoning) of this Code. also shall be given. The same notice and hearing requirements also should be observed when making home rule development agreements. However, failure to satisfy all of such notice and hearing requirements shall not be grounds to invalidate a home rule development agreement.

§2-99. AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT BY MUTUAL CONSENT.

A statutory development agreement adopted pursuant to this Article may be amended or cancelled by mutual consent of the parties to the agreement or by their successors in interest utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements pursuant to this Article and any administrative code authorized by Section 2-98 of this Code.

**§2-100. RESERVATION OF HOME RULE
AUTHORITY.**

Nothing contained in this Article shall be construed so as to prevent the City from entering into an agreement which is substantially similar to a development agreement adopted pursuant to the Florida Local Government Development Agreement Act but which is based upon the home rule authority granted the City pursuant to Article VIII, Section 1(f), of the constitution of the state and Florida Statutes Chapters 163, 166 and 380, and specifically recognized by the state legislature in Florida Statutes §163.3220(5).

**§2-101. CONFLICTS BETWEEN
DEVELOPMENT AGREEMENT AND
OTHER LAND DEVELOPMENT
REGULATIONS.**

To the extent that this Land Development Code may permit it and a development agreement purports to rezone land, grant deviations or variances from this Land Development Code, including Article II of this Chapter, grant preliminary development orders or final development orders or amendments to or extensions thereof equivalent to those which are available pursuant to Chapter 3 (design standards), implement development orders or amendments to development orders for developments of regional impact, or grant building permits or other permits which specifically allow the physical alteration or improvement of land, the development agreement must explicitly identify each instance of conflict with other ordinances and expressly provide for the development agreement to control, or else all of the provisions of such other ordinances shall control to the extent that the development agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a development agreement or an ordinance is to control shall be interpreted to favor the ordinance.

§2-102. APPEALS.

No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the City's Comprehensive Plan except pursuant to the procedures set forth in Florida Statutes §163.3215. A party or a successor in interest to a party to a development agreement may bring suit to challenge the City's administration of a

development agreement only after he has exhausted the administrative remedies prescribed in Chapter 4 (zoning) of this Code for appeals from administrative actions.

§2-103--2-140. RESERVED.

**ARTICLE IV. TRANSFER OF
DEVELOPMENT RIGHTS**

§2-141. PURPOSE OF ARTICLE.

The purpose and intent of this Article is to recognize that there are environmentally sensitive lands categorized as wetlands by the City Comprehensive Plan that warrant protection in their undeveloped, natural state. Further it is the purpose and intent of this Article to provide an alternative to development on these environmentally sensitive lands by providing an economic relief mechanism that encourages private property owners to utilize the transfer of development rights (TDR) concept. The transfer of development rights concept is designed to direct future growth in a logical, economical and efficient manner toward those areas of the City best suited to providing the public services and facilities necessary for the protection of the health, safety and welfare of the general public.

§2-142. APPLICABILITY OF ARTICLE.

This Article applies to all incorporated areas of the City.

§2-143. RESERVED.

§2-144. ADMINISTRATION OF ARTICLE.

The City Manager or designee are responsible for the administration and enforcement of this Article.

§2-145. CONFLICTING PROVISIONS.

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

§2-146 TRANSFER OF DEVELOPMENT RIGHTS CONCEPT; COMPUTATION OF UNITS.

- A. *Legal concept.* The transfer of development rights idea is based upon the property law concept that the right to develop real estate is one of the bundle of rights included in fee simple ownership of land. Fee simple ownership of real estate allows the owner to sell, lease or trade any one or more, or all of the bundle of rights to their property. This bundle includes the right to use, lease, sell, or abandon the property or any of its components of ownership when not retained by a previous owner such as mineral, oil, gas, air, or development rights. All rights of ownership are subject to the limitation and legislative powers of the local government.
- B. *Development rights defined.* A development right is an appurtenant right of land ownership. When lawfully established, a development right has an economic value separate from the land itself. It can be subject to reasonable regulation by local government under its police powers. The development right can be transferred by the owner to another property, through gift or sale. The landowner may sell the development rights and still retain the title to the land and the right to use the surface of the land on a limited basis.
- C. *Establishment of development rights.*
1. For the purposes of this Article, the owner of any vacant or undeveloped parcel of land or portion of a parcel designated wetlands by the comprehensive plan may transfer the development rights allocated to the parcel of land to any person at any time, subject to the provisions of subsection (C)(2) of this Section.
 2. Development rights may only be transferred to those parcels or portions of parcels designated as receiving parcels. The maximum number of development rights that may be transferred to the receiver parcel must be determined in accordance with the following:
 - a. Development in freshwater wetlands located in residential land use

categories shall be limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in freshwater wetlands, identified on the map of Evaluated Wetlands in the Future Land Use Map Series, shall be one unit per 20 acres, except:

- i. One single-family residence will be permitted on lots meeting the single-family residence provision contained in the Administrative section of the Future Land Use Element; and,
- ii. Transfer of density provision – Owners of identified freshwater wetlands may transfer densities to contiguous uplands under common ownership at the standard underlying density permitted for the uplands, provided that the resulting upland density does not exceed that shown in the following schedule and the area receiving the density transfer will be, thereafter, compatible with existing or planned development on adjacent lands and not negatively impact sensitive upland habitats and species.

| FUTURE LAND USE CATEGORY | STANDARD MAXIMUM DENSITY (Dwelling units per gross acre) | MAXIMUM UPLAND DENSITY AFTER TRANSFER (Dwelling units per gross upland acre) |
|---|--|--|
| Moderate Density Mixed-Use PD | 6 | 7.5 |
| Medium Density Multi-Family Residential | 6 | 8 |
| High Density Multi-Family Residential | 10 | 12.5 |

| | | |
|--------------------------------------|----|------|
| High Density Mixed-Use Village | 10 | 12.5 |
| Old 41 Redevelopment overlay | 10 | 12.5 |

**§2-147. TRANSFER OF
DEVELOPMENT RIGHTS
LIMITATIONS.**

- A. Development rights authorized and severed by another governmental unit may not be used in the City.
- B. The City may limit the number of TDR units that can be transferred to the receiver parcel to an intensity lower than the amount requested by the developer if, during the zoning or development review process, the City determines that the receiver parcel for development reflects unique or unusual circumstances or is surrounded by uses such that a development of the parcel at an increased density or at a density bonus would be contrary to the public health, safety and welfare, and inconsistent with the Comprehensive Plan. The City Council or the City Manager or designee must, as part of any development order issued limiting the use of TDR units to less than the amount requested by the property owner or developer, include specific findings of fact to support the limitation and specify what changes, if any, that would make the parcel proposed for development eligible for additional development rights.
- C. Areas defined as wetlands that are approved as part of any development order for open space or water management purposes are not eligible to sever or receive TDR units.
- D. The barrier or coastal islands, including but not limited to Lovers Key, Big Hickory Island, Little Hickory Island, and Bonita Beach, are not eligible to receive TDR units.
- E. Agreements for reciprocal transfers of TDR units from or to the County may be utilized for contiguous properties within both jurisdictions.

§2-148--2-190. RESERVED.

ARTICLE V. RESERVED.

§2-191--2-230. RESERVED.

ARTICLE VI. IMPACT FEES

DIVISION 1. GENERALLY

§2-231--2-260. RESERVED.

DIVISION 2. ROADS IMPACT FEE

§2-261. STATUTORY AUTHORITY.

The City Council has the authority to adopt this Division pursuant to Article VIII of the constitution of the state, Florida Statutes Chapter 166 and Florida Statutes §§163.3201, 163.3202 and 380.06(16).

§2-262. APPLICABILITY OF DIVISION.

This Division applies in the City of Bonita Springs, Lee County, Florida.

**§2-263. INTENT AND PURPOSE OF
DIVISION.**

- A. This Division is intended to implement and be consistent with:
 1. the Lee Plan, which also constitutes the City of Bonita Springs Comprehensive Plan,
 2. the Lee County Land Development Code, which also constitutes the City of Bonita Springs Land Development Code, and
 3. the Lee County Code of Ordinances, which also constitutes the City of Bonita Springs Code of Ordinances,

until the City of Bonita Springs adopts its own Comprehensive Plan, Land Development Regulations and Code of Ordinances, or portions thereof.
- B. The purpose of this Division is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide roads in the City as contemplated by

the Lee Plan.

§2-264. RULES OF CONSTRUCTION.

- A. For the purposes of administration and enforcement, unless otherwise stated in this Division, the following rules of construction apply to the text of this Division:
 - 1. Any road right-of-way used to define roads impact fee district boundaries may be considered to be within any district it bounds for purposes of using these funds.
 - 2. All transportation terms used in this Division have the same meaning as in the City of Bonita Springs Comprehensive Plan, and in Chapter 4 (Zoning) and Chapter 3 (Design Standards), of the City of Bonita Springs Land Development Code, unless otherwise indicated.

§2-265. IMPOSITION.

- A. Except as provided in this Division, any person who, after September 16, 1985, seeks to develop land by applying to the county or any person, who, after December 31, 1999, seeks to develop land by applying to the county or City, for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for the purpose of making an improvement to land for one of the uses specified in this Division, that will generate or attract additional traffic, is required to pay a roads impact fee in the manner and amount set forth in this Division.
- B. No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to this Division may be issued by the county or the City until the roads impact fee required by this Division has been paid.
- C. In the case of structures, mobile homes or park trailers that are moved from one location to another, a roads impact fee will be collected for the new location if the structure, mobile home or park trailer constitutes one of the land development uses listed in this Division, regardless of whether roads impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home

or park trailer so moved is replaced by an equivalent use, no roads impact fee is owed for the replacement use. In every case, the burden of proving past payment of roads impact fees or equivalency of use rests with the feepayer.

§2-266. COMPUTATION OF AMOUNT.

- A. At the option of the feepayer, 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 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 Due at 100% of Actual Full Cost |
| <i>Residential</i> | |
| Single-family | \$2,436 per unit |
| Multiple-family building, Duplex, Townhouse, Two-family attached | \$1,687 per unit |
| Mobile Home (1)/RV Park Site | \$1,221 per unit |
| Adult Congregate Living Facility (ACLF) | \$ 550 per unit |
| Hotel/Motel or Timeshare | \$1,834 per unit |
| <i>Retail Commercial: (square feet = sf)</i> | |
| Retail or Shopping Center (0-99,999 sf) | \$3,992 per 1,000 sf |
| Retail or Shopping Center (100,000-249,999 sf) | \$3,869 per 1,000 sf |
| Retail or Shopping Center (250,000-499,999 sf) | \$3,634 per 1,000 sf |
| Shopping Center (500,000+ sf) | \$3,354 per 1,000 sf |
| Bank | \$6,063 per 1,000 sf |
| Car Wash, Self-Service | \$7,749 per stall |
| Convenience Store w/Gas Sales | \$8,715 per 1,000 sf |
| Golf Course (2) | \$ 711 per acre |
| Movie Theater | \$5,600 per 1,000 sf |
| Restaurant, Fast Food | \$9,886 per 1,000 sf |
| Restaurant, Standard | \$4,905 per 1,000 sf |
| <i>Office/Institutional</i> | |
| Office, General (0-99,999 sf) | \$2,254 per 1,000 sf |
| Office, General (100,000+ sf) | \$1,918 per 1,000 sf |
| Office, Medical | \$6,334 per 1,000 sf |
| Hospital | \$2,941 per 1,000 sf |
| Nursing Home | \$ 824 per 1,000 sf |

| | |
|---------------------------------------|----------------------|
| Church | \$1,402 per 1,000 sf |
| Day Care Center | \$3,900 per 1,000 sf |
| Elementary/Secondary School (Private) | \$ 611 per 1,000 sf |
| <i>Industrial</i> | |
| Industrial Park or General Industrial | \$1,681 per 1,000 sf |
| Warehouse | \$1,198 per 1,000 sf |
| Mini-Warehouse | \$ 419 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 (ie, 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.

Note: *The fee schedule in effect in the Lee County LDC prior to July 1, 2000 will be deleted from the LDC. Until the effective date of the fee schedule in this Section, the predecessor fee schedule contained in the Lee County LDC will continue in force. After the effective date of the fee schedule in this Section, the predecessor fee schedule contained in the Lee County LDC, will no longer be of any force or effect, except as to determining fees for building permits issued prior to July 1, 2000 or as otherwise indicated below.*

Building permit (or golf course or RV Park development order) applications submitted on or before the effective date of the fee schedule contained in this Section, will be assessed road impact fees based upon the fee schedule applicable on June 30, 2000, if the building permit (or golf course or RV Park development order) is issued on or before August 31, 2000. Building permit (or golf course or RV Park development order) applications submitted on or after the effective date of this Section will be subject to the

amended roads impact fee schedule. All permits, and golf course or RV park development orders, issued on or after September 1, 2000 will be assessed in accordance with the amended roads impact fee schedule, regardless of when the application was submitted to the County or City.

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: (1) the permit is approved by the County; (2) has been picked up by the owner or his agent; and , (3) all applicable fees have been paid. [Also, NOTE: 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 golf courses and RV parks.]

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.

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.

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 Map 3A of the transportation element of the Lee 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 | = | $ADT \times \% \text{ NEW} \times \text{LENGTH} \div 2$ |
| 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 |
| $\div 2$ | = | Avoids double-counting trips for origin and destination |
| NET COST/VMT | = | $\text{COST/VMT} \text{ CREDIT/VMT}$ |
| COST/VMT | = | $\text{COST/LANE-MILE} \div \text{AVG LANE CAPACITY}$ |
| 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 | = | $\$/\text{GAL} \div \text{MPG} \times 365 \times \text{NPV}$ |
| \$/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 service, 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 May 1, 2003. Subsequent review dates will be calculated based upon the May 1, 2003 date.

§2-267. PAYMENT.

- A. The feepayer must pay the roads impact fees required by this Division to the building official prior to the issuance of any building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as otherwise provided in this Division. No building permit, mobile home move-on permit or recreational vehicle development order may be issued by the City the impact fee has been paid, except as provided in this Division.
- B. In lieu of cash, up to 97 percent of the roads impact fee may be paid with credits created in accordance with the provisions of this Division.
- C. The roads impact fee may be collected by Lee County and remitted to the City in accordance with an interlocal agreement approved by resolution providing for same and providing for a reasonable retention for administrative costs, not to exceed 3 %.
- D. All funds collected pursuant to this Division will be properly identified by roads impact fee benefit district and promptly transferred for

deposit into the appropriate roads impact fee trust fund to be held in separate accounts as determined in Section 2-269 of this Code and used solely for the purposes specified in this Division.

**§2-268. BENEFIT DISTRICTS
ESTABLISHED.**

- A. The corporate limits of the City shall constitute the roads impact fee benefit district. Subdistricts may be created by further legislation or by interlocal agreement. For the purposes of the Lee County benefit districts, the City constitutes a sub district for the purpose of this Division. All or a portion of the City may be within the established districts set forth in Appendix K to Lee County Ordinance No. 00-07. Municipal district boundaries will expand and contract as the municipality boundaries are amended in accordance with Florida law.

§2-269. TRUST FUNDS-ACCOUNTS.

- A. There is established a roads impact fee trust fund—accounts for the City. Subsidiary accounts may be established for sub-districts created by the City Council or by interlocal agreement.
- B. Funds withdrawn from these accounts must be used in accordance with the provisions of this Division.

§2-270. USE OF FUNDS.

- A. Funds collected from roads impact fees must be used for the purpose of capital improvements to approved roads. Such improvements must be of the type made necessary by the new development. Funds may not be used for periodic or routine maintenance as defined in Florida Statutes §334.03(15) and (20). Except as provided in subsection (C) of this Section, impact fee collections, including any interest earned thereon, less administrative costs retained, must be used exclusively for capital improvements within the roads impact fee district from which funds were collected, or for projects in other roads impact fee districts that are of direct benefit to the roads impact fee district from which the funds were

collected. These impact fee funds must be segregated from other funds and expended as provided in the appropriate ordinance or administrative code. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements to approved roads. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby must be divided and segregated, so the amount of the proceeds reserved for road purposes bears the same ratio to the total funds collected that the roads impact fee funds used or pledged bear to the total funds used or pledged.

- B. Each fiscal period the City Manager or designee will present to the City Council a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several roads impact fee trust funds to specific road improvement projects. Money, including any accrued interest, not assigned in any fiscal period must be retained in the same roads impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this Division.
- C. Unless prohibited by an appropriate interlocal agreement, money placed in one roads impact fee trust fund may be borrowed and placed in another roads impact fee trust fund if the City Council first determines in a public meeting that the loan will not disrupt or otherwise alter the timing of provision of capital facilities to the lending district and will be repaid from specifically identified revenue sources within two years, either from the borrowing district or sub-district or from some other source, with interest at a rate established by the Council at the time it authorizes the loan; provided, however, that, if the interest is to be paid from roads impact fees collected in the borrowing district, the Council first finds that the amount of the interest to be paid will be equal to or less than the benefit given to fee-payers in the borrowing district or sub-district by virtue of the earlier provision of capital facilities in the borrowing district or sub-district made possible by virtue of the loan. To secure

repayment of the loan on the terms established for it by the council, the motion authorizing the loan implicitly must include direction and authorization to the county's fiscal officers to perform all acts necessary to comply with the loan terms. Loans may not be renewed.

§2-271. REFUND OF FEES PAID.

- A. If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or voluntarily surrendered, and therefore voided, and no construction or improvement of land, including moving a mobile home onto land, has commenced, then the fee-payer is entitled to a refund of the roads impact fee paid as a condition for its issuance, except that three percent of the fee paid will be retained as an administrative fee to offset the cost of processing the refund. Subject to the limitations set forth in subsection (B) of this Section, the fee-payer is entitled to a refund equal to 97 percent of the roads impact fee paid. No interest will be paid to the fee-payer on refunds due to non-commencement.
- B. If a permit or development order expires, then a refund of the roads impact fee is allowed, if no construction has commenced, to the extent the fee was paid in cash, that is, a noncredit payment. However, the 3% administrative fee described in subsection (A) of this Section, will be deducted from the amount eligible for refund prior to the issuance of the roads impact fee refund.
- C. Any funds not expended or encumbered by the end of the calendar quarter immediately following 10 years from the date the roads impact fee was paid will, upon application of the fee-payer within 180 days of that date, be returned to the fee-payer with interest at the rate of 6% per annum.

§2-272. PREPAYMENT OF FEES.

Prepayment of roads impact fees will be accepted by the City in accordance with the following:

- A. Prepayment is specifically required or permitted by:
 - 1. A DRI development order adopted in accordance with Florida Statutes Chapter 380;

2. An agreement between the developer and City made in accordance with Florida State Constitution Article VIII and Chapter 166 Florida Statutes or
 3. A development agreement in compliance with Florida Statutes §163.3220-163.3243 (The Florida Local Government Development Agreement Act).
- B. Prepayment is made by certified check or cashier's check accompanied by a letter identifying the applicable roads impact fee benefit district, the amount to be prepaid and the document allowing prepayment delivered to the building official.
- C. The City will issue credit equal to the prepayment, subject to the express terms of the development order, agreement or development agreement.

§2-273. DEFERRAL OF FEES.

- A. Deferrals will be limited to the following:
1. Persons seeking building permits for a shell building as defined herein may, at their option, defer payment of roads impact fees until issuance of any interior completion permits.
 2. No interior completion permit will be issued until the applicant pays the corresponding road impact fee that is due, or demonstrates to the building official that the road impact fee due has already been paid for the unit(s) to be completed.
- B. Deferrals must be claimed by the feepayer at the time of the application for a commercial or residential building permit, mobile home move-on permit or recreational vehicle development order. Any deferrals not so claimed are deemed waived by the feepayer.

§2-274. EXEMPTIONS.

- A. The following are exempt from payment of the roads impact fee:
1. Alterations or expansion of an existing building or use of land where no additional living units will be produced, where the use is not changed, and where the alteration or expansion will not produce more vehicular trips than the

- existing use.
2. The construction of accessory buildings or structures that will not produce more vehicular trips than those produced by the principal building or use of the land.
 3. The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985.
 4. The replacement of a building, mobile home, park trailer or structure, that was constructed or placed after September 16, 1985, where the correct roads impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided that no additional vehicular trips will be produced than those produced by the original use of the land.
 5. An amendment to a recreational vehicle development order, provided that the amendment does not increase the number of recreational vehicle units permitted.
 6. A building permit obtained by or for the United States of America, the State of Florida, Lee County or the Lee County School Board.
 7. A building permit, mobile home move-on permit or recreational vehicle development order for which the roads impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
 8. A building permit, mobile home move-on permit or recreational vehicle development order that does not generate or attract additional traffic.
 9. Building permits issued in a Council-approved or recognized redevelopment area or enterprise zone, or low or moderate income housing development, but only when the permit is identified by the type of land use and by the land area

or housing or redevelopment program in question by explicit language included in an appropriate development order.

- B. Exemptions must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions not so claimed is deemed waived by the feepayer.

§2-275. CREDITS.

- A. Credits are subject to the following:

1. *Prohibition.* No credit will be given for:
 - a. Site-related improvements,
 - b. Local roads,
 - c. Access streets needed to achieve site location standards for commercial development or for internal circulation unless required by the City pursuant to criteria in Chapter 3 (Design Standards) of this Code.
2. *Capital improvement to approved roads.* All capital improvements for approved roads, except for those improvements deemed site-related pursuant to a development or zoning approval, may generate roads impact fee credits in amounts to be established pursuant to subsection (A)(3) of this Section or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the City, unless otherwise provided for in an appropriate interlocal agreement.

If the improvement is not site-related and is required under a development or zoning approval, credits will be given to the extent required by law.

3. *Conditions of credit approval.* Credit for road construction or land dedication is subject to the following:
 - a. *Road construction.* A request submitted for road impact fee construction credits must include a detailed project description and complete cost estimates, prepared by a qualified professionals, sufficient to

enable the City Manager or designee to verify the cost estimates and determine the appropriate credit amount. The City Manager or designee retains the right to secure other engineering and construction cost estimates meeting the fee methodology set forth in this Division to determine independently the credit amount to recommend or approve.

- i. *Class 1 roads.* The City Manager or designee may approve roads impact fee credits for construction costs applicable to class 1 roads. This includes roads required to be constructed pursuant to a zoning condition or development order approval. Construction credits for class 1 roads will be given for the full actual cost of construction, as determined and verified by the City Manager or designee.
- ii. *Class 2 or 3 roads.* In the case of class 2 and 3 roads, the City Manager or designee will make a recommendation to the City Council on the appropriate amount of credits.

Construction credits for class 2 and class 3 roads may be given at the discretion of the City Council on a case-by-case basis if the Council finds that: (1) the construction will not increase public infrastructure costs to serve the new development, and (2) the grant of credits will not significantly affect future roads impact fee collections within the roads impact fee benefit district in which the credit is created.

The amount of credit approved by the Council is limited to the actual verified costs of construction and may be reduced by the percentage that the new road's total capacity is expected to be utilized by local traffic from future development on adjacent lands owned or controlled by the

grantor. This amount may be further reduced, at the Council's discretion, to reflect the county Department of Transportation's estimate of the value of the accelerated construction of the road in relation to the county's schedule of planned road construction, or an estimate of the same performed on behalf of the City.

- b. *Land dedication.* The following documents must be submitted to support an application for road impact fee credits applicable to land dedication for approved roads:
- i. A signed and sealed ALTA survey prepared by a licensed Professional Surveyor and Mapper and certified to the City, encompassing the land to be dedicated to the City and covered by the title insurance policy;
 - ii. A specimen of the deed that will be used to convey title to the appropriate governmental body;
 - iii. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the City Attorney or designee and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
 - iv. Property appraisals prepared by qualified professionals that appraise the road as part of the whole development of regional impact, planned development or parent parcel; and
 - v. A document from the tax collector stating the current status of the property taxes

These submittals will be reviewed by the City Manager or designee in making the decision to approve credits or to make a

recommendation to the City Council.

Except where a dedication is made pursuant to a condition of zoning approval or development of regional impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the land in question is subject to a valid agreement, zoning approval or development order prescribing a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site-related improvement and the condition does not specifically prescribe otherwise, then the land value will be based upon the value of the land as it existed prior to the approval containing the condition of dedication. The City Manager or designee retains the right to determine independently the amount of credit to be approved or recommended by securing other property appraisals for right-of-way dedications using the methodology described in this Division.

Credit for dedication of right-of-way will be limited to the minimum amount of right-of-way needed by Lee County Department of Transportation or the City. Credit for class 1 and class 2 roads will be given for the full value of the land in question, as determined by the methodology and procedures set out in this subsection. Credit for dedication of right-of-way for class 3 roads may be given by the City Council on a case-by-case basis if the council finds that: (1) the

dedication will not increase public infrastructure costs to serve the new development, and (2) the granting of credits will not significantly affect future roads impact fee collections within the roads impact fee benefit district in which the credit is created.

The amount of credit approved by the City Council is limited to the value of the land, as determined by the methodology and procedures set out in this subsection, and may be reduced by the percentage the capacity of the road is reasonably expected to be utilized by local traffic from future development on adjacent lands owned or controlled by the grantor. This amount may be further reduced, at the City Council's discretion, to reflect the City Council's estimate of the value of the accelerated acquisition of the road in relation to the County or City's schedule of planned road construction. In every case, roads impact fee credits must be calculated consistent with Florida Statutes §380.06(16).

- c. *Impact fee credit application requirement waiver.* The City Attorney or designee, with the prior approval of Lee County Department of Transportation, or the appropriate City official, may waive one or more of the impact fee credit application requirement if the requirement is clearly not necessary to protect a City interest. A waiver granted by the City Attorney or designee must be in writing, addressed to the applicant, with a copy to Lee County Department of Transportation.
4. *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the county for maintenance in accordance with Lee County AC 11-7 or when the fee payer posts security for the costs of

such construction. Credits for land dedication will be created when the title to the land has been accepted by the City and recorded in the official records of the Clerk of Circuit Court. No credits for construction or dedication will be approved or created until the City has established the location of the road using the procedures provided by law. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement must be posted with the City Council, made payable to the county in an amount approved by the City Manager or designee equal to 110 percent of the full cost of construction. If the road construction project will not be constructed within one year of the acceptance of the offer by the City, the amount of the security will be increased by ten percent, compounded for each year of the life of the security. The security must be reviewed and approved by the City Attorney or designee prior to acceptance by the City. If the proposal is to dedicate the road to the county, the City may assign its rights in such security to the county if permitted by law.

5. *Transferability.* Roads impact fee credits created on or after **October 1, 1989** are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the Lee County Administrative Code. Credits may be used to pay or offset roads impact fees in the same roads impact fee district in which they are earned, or in other districts directly benefited by the capital improvements for which the credits were granted, and consistent with any interlocal agreements made with participating municipalities. Credits may not be used outside the district earned unless the proposed use is found to be in compliance with this Division by the City Attorney or designee and the City Manager or designee. Unless a longer period is specifically authorized by the City Council, transferable credits must be used within 10 years of the date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange

for credits were recorded in the City's official record book. The creation date for credits pursuant to prepayment of fees will be the date the prepayment is received by the City. If roads impact fees are increased before credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee is increased for the particular listed use, rounded to the nearest dollar. For example, see Exhibit A of Ordinance No. 90-24, on file in the Lee County clerk's office. If roads impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within 10 years of issue will be canceled by the building official.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this Division.

6. *Use of credits.* Unless converted to transferable form pursuant to subsection (A)(7), roads impact fee credits created prior to **October 1, 1989**, must be used, on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of subsections (A)(6) and (A)(7) of this Section, "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owned the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering pre-October 1, 1989 credits, the building official may rely upon

apparent authority; but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.

7. *Conversion of credits.* Credits created prior to October 1, 1989, may be converted to transferable form unless conversion is prohibited by the conditions of a development order issued pursuant to Florida Statutes Chapter 380, or some other state, county or city development approval. The conversion must be accomplished by an agreement between the City and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the City from claims made by other persons asserting an interest in the pre-**October 1, 1989**, credits.
8. Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this Division.
- B. FeePAYERS claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and, if so, the amount of the credits.
- C. Credits must be claimed by the feePAYER at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feePAYER.
- D. Once used, credits must be canceled and may not be reestablished even if the permit for which they were used expires without construction.
- E. Any person seeking credits for dedication of land must meet with the City Attorney or designee and City Manager or designee seek agreement on appraisal methodology and

assumptions before preparing any appraisals for valuation of land to be dedicated.

- F. *Reciprocity with Lee County.* Credits issued by Lee County will be recognized by the City if:
1. The credits are issued for improvements that would qualify under this Division.
 2. The County has adopted a reciprocal regulation providing for similar recognition of the City road impact fee credits or has entered into an agreement with the City allowing reciprocal transfer of impact fee credits.

§2-276. APPEALS.

Decisions made by the City Manager or designee, or by the building official, in the course of administering this Division may be appealed to the City Council. Until the City Council adopts an administrative hearing process that includes hearings of such appeals, the Council shall make the final administrative determination. However, the City Council may refer the appeal to a special master or hearing examiner for hearing and a recommended order.

**§2-277. ENFORCEMENT OF DIVISION;
PENALTY; FURNISHING FALSE
INFORMATION.**

A violation of this Division is an offense against the City punishable by a fine of \$500 per offense and 60 days in jail, or both. Each day of violation is a separate offense. In addition to or in lieu of any criminal prosecution, the City, or any feepayer, has the power to sue for relief in civil court to enforce the provisions of this Division. Knowingly furnishing false information to the City Manager or designee, the building official or any municipal official who is charged with the administration of this Division on any matter relating to the administration of this Division constitutes a violation.

§2-278--2-300. RESERVED.

DIVISION 3. PARKS IMPACT FEE

§2-301. STATUTORY AUTHORITY.

The City Council has the authority to adopt this Division pursuant to Article VIII of the constitution of the state, Florida Statutes Chapter 166 and Florida Statutes §§163.3201, 163.3202 and 380.06(16).

§2-302. APPLICABILITY OF DIVISION.

This Division shall apply to the incorporated area of the City and within any municipality which enters into an interlocal agreement with the City to collect parks impact fees during the term of such agreement.

**§2-303. INTENT AND PURPOSE OF
DIVISION.**

- A. This Division is intended to implement and be consistent with the City of Bonita Springs Comprehensive Plan.
- B. The purpose of this Division is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide parks in the City as contemplated by the City of Bonita Springs Comprehensive Plan.

§2-304. RESERVED.

§2-305. IMPOSITION.

- A. Except as provided in Sections 2-312 through 2-314 of this Code, any person who, after **September 16, 1985**, seeks to develop land by applying to the City for the issuance of a building permits, mobile home move-on permit or recreational vehicle development order to make an improvement to land for one of the uses specified in Section 2-306 of this Code will be required to pay a parks impact fee in the manner and amount set forth in this Division.
- B. No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to Section 2-306 of this

Code will be issued by the City unless and until the parks impact fee required by this Division has been paid.

- C. In the case of structures, mobile homes or park trailers moved from one location to another, a parks impact fee will be collected for the new location if the structure, mobile home or park trailer is a type of land development listed in Section 2-306 of this Code, regardless of whether parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no parks impact fee will be owed for the replacement use. In every case, the burden of proving past payment of parks impact fees or equivalency of use rests with the feepayer.

§2-306. COMPUTATION OF AMOUNT.

- A. At the option of the feepayer, the amount of the parks impact fee may be determined by the schedule set forth in this subsection. 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.

| <u>Land Use Type Living Unit</u> | <u>Total Parks Impact Fee per Unit at 100% of Actual Full Cost (rounded to nearest dollar)</u> |
|--|--|
| Single-family residence | \$253.00 |
| Multiple-family building, duplex, two-family attached or townhouse | \$131.00 |
| Mobile home | \$210.00 |
| Timeshare | \$228.00 |
| Hotel/motel room | \$179.00 |
| Recreational vehicle site | \$199.00 |

- 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 parks impact fee shall be based upon the net increase in the impact fee for the new use as compared to the

previous use. However, should the change of use, redevelopment or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.

- C. If the parks impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or paid, whichever is applicable. If parks impact fees are owed, no participating municipality or City permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid, and the building official may bring any action permitted by law or equity to collect unpaid fees.
- D. The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, at his option, submit evidence to the City Manager or designee indicating that the fees set out in subsection (A) of this Section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with the City Administrative Code, the City Manager or designee may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the City of Bonita Springs Comprehensive Plan for parks.

§2-307. PAYMENT

- A. The feepayer must pay the parks impact fee required by this Division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed. No building permit, mobile home move-on permit or recreational vehicle development order may be issued for development listed in Section 2-306(A) of this Code by the City or any participating municipality until the impact fee has been paid.

- B. In lieu of cash, up to 97 percent of the parks impact fee may be paid by the use of credits created in accordance with the provisions of Sections 2-312 and 2-314 of this Code.
- C. Participating municipalities must remit parks impact fees to the City at least once each month, less the amount retained pursuant to Section 2-310(C) of this Code, unless another method is specified in an appropriate interlocal agreement.
- D. All funds collected pursuant to this Division must be promptly transferred for deposit into the parks impact fee trust fund and used solely for the purposes specified in this Division.

§2-308. BENEFIT DISTRICT ESTABLISHED.

For purposes of this Division, there is hereby established a single Citywide parks impact fee benefit district. Subdistricts may be created by interlocal agreement.

§2-309. TRUST FUND.

- A. There is hereby established a parks impact fee trust fund. parks impact fees collected prior to **October 1, 1989**, shall be transferred and deposited into this fund. Subsidiary accounts may be established for subdistricts created by interlocal agreement.
- B. Funds withdrawn from this account must be used in accordance with the provisions of Section 2-310 of this Code.

§2-310. USE OF FUNDS.

- A. Funds collected from parks impact fees will be used for the purpose of capital improvements for parks. parks impact fee collections, including any interest earned thereon, less administrative costs retained pursuant to subsection (C) of this Section, will be used exclusively for capital improvements or expansion within the City. These impact fee funds will be segregated from other funds and will be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for parks. If these funds or pledge of funds are combined

with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby will be divided and segregated in such a fashion that the amount of such proceeds reserved for park purposes bears the same ratio to the total funds collected that the parks impact fee funds used or pledged bear to the total funds used or pledged.

- B. Each fiscal period the City administrator will, after consultation with participating municipalities and consistent with the provisions of any inter-local agreements made with them, present to the City Council a proposed capital improvement program for parks, assigning funds, including any accrued interest, from the parks impact fee trust fund to specific park projects. Monies, including any accrued interest, not assigned in any fiscal period will be retained in the parks impact fee trust fund until the next fiscal period, except as provided by the refund provisions of this Division.
- C. The City collecting parks impact fees is entitled to retain up to three percent of the parks impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this Division.

§2-311. REFUND OF FEES PAID.

- A. If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered, and is therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has been commenced, then the feepayer shall be entitled to a refund of the parks impact fee paid as a condition for its issuance, except that three percent of the fee paid shall be retained as an administrative fee to offset the cost of processing the refund. Subject to the limitations set forth in subsection (B) of this Section, the feepayer shall be entitled to a refund equal to 97 percent of the parks impact fee paid. No interest shall be paid to the feepayer on refunds due to noncommencement.
- B. No refund shall be allowed for any expired permit or development order which was

obtained with the use of credits, except for that portion of the parks impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (A) of this Section shall be deducted from the portion of the fee which was not paid by credit.

- C. Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the parks impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

§2-312. PREPAYMENT OF FEES.

If required or specifically permitted by the terms of a development order adopted pursuant to Florida Statutes Chapter 380, or by an agreement made by the City pursuant to its home rule powers granted in Article VIII of the Constitution of the State and Florida Statutes §125.01, or by a development agreement made pursuant to Florida Statutes §163.3220-163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay parks impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the amount of parks impact fees prepaid. The City will issue credit equal to the prepayment subject to the express terms of the development order, agreement or development agreement.

§2-313. EXEMPTIONS.

- A. The following are exempted from payment of the parks impact fee:
1. Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
 2. The construction of accessory buildings or structures that will not produce additional living units.
 3. The replacement of a(n) existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before **September 16, 1985**.

4. The replacement of a building, mobile home, park trailer or structure, which was constructed or placed after **September 16, 1985**, where the correct parks impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided no additional living units will be produced than those produced by the original use of the land.
5. An amendment to a recreational vehicle development order provided the amendment does not increase the number of recreational vehicle units permitted.
6. A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
7. A building permit, mobile home move-on permit or recreational vehicle development order for which the parks impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
8. A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an additional living unit.
9. Building permits that obtain a banked impact fee credit from the City of Bonita Springs. The City hereby grants to itself the authority to bank impact fee credits as a result of any public improvement project occurring on or after April 15, 2000 within the City's boundary. The City may bank credits when buildings, mobile home, park trailer or structures are physically removed but not replaced in the same location. City Council, by resolution, may use the banked impact fee credit for a City operated affordable housing program, or may grant non-profit corporations who are building affordable housing credits specified by amount and type, if available in the City's impact fee bank.

- B. Exemptions must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions not so claimed will be deemed waived by the feepayer.

§2-314. CREDITS.

- A. Credits are subject to the following:

1. *Prohibition.* No credit will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with Section 2-306(D) of this Code.
2. *Capital improvement to park facilities.* All other capital improvements for approved parks may generate parks impact fee credits in amounts to be established pursuant to subsection (A)(3) of this Section or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the City, unless otherwise provided for in an appropriate interlocal agreement, or unless the improvement is required under a participating municipality, state, county or city development or zoning approval, in which case credits will be given to the extent required by law.

The City will issue park impact fee credits for the value of critical occupied habitat in accordance with Section 3-474(E)(3) of this Code when the size of habitat preserved on a given project exceeds the open space requirements of Chapter 3 (Design Standards) of this Code.

3. *Conditions of credit approval.* Credit for park capital improvement construction or land dedication is subject to the following:
 - a. *Capital improvement construction.* When a person requests credit for construction of an approved park facility, he must submit a project description in sufficient detail and with complete cost estimates prepared by qualified professionals so as to enable the City Manager or designee

to verify the cost estimates and thereby determine the appropriate amount of credit to recommend to the City Council.

- b. *Land dedication.* When a person requests credit for land dedication for approved park facilities, he must present the following:
 - i. A survey of the land to be dedicated, certified by a professional land surveyor or registered land surveyor, each of whom are licensed in this state;
 - ii. A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
 - iii. An ALTA Form B title insurance policy in the amount equal to the approved value of the credits. The policy must be issued by a company satisfactory to the City Attorney or designee and verify that the proper deed will convey unencumbered fee simple title to the appropriate governmental body;
 - iv. Property appraisals prepared by qualified professionals that appraise the land as part of the whole development of impact, planned development, or parent parcel; and
 - v. A certified copy of the most recent assessment of the property for tax purposes.

These submittals will be reviewed by the City Manager or designee in making the decision to recommend credits to the City Council.

Except where a dedication is made pursuant to a condition of zoning approval or development of impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the

parent parcel. If the land in question is subject to a valid agreement, zoning approval, or development order that prescribes a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site related improvement and the condition does not specifically prescribe otherwise, the land will be valued based on the value of the land as it existed prior to the approval that contains the condition of dedication. The City Manager or designee retain the right to independently determine the amount of credit to be recommended by securing other property appraisals for those improvements or land dedications. In every case, parks impact fee credits will be calculated so as to be consistent with Florida Statutes §380.06(16).

4. *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the appropriate governmental body for maintenance or when the feepayer posts security for the costs of the construction. Credits for land dedication will be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the Clerk of Circuit Court. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement, must be posted with the City Council, made payable to the County in an amount approved by the City Manager or designee equal to 110 percent of the full cost of construction. If the park construction project will not be completed within one year of the acceptance of the offer by the City, the amount of the security will be increased by 10 percent, compounded for each year of the life of the security. The security must be

reviewed and approved by the City Attorney or designee prior to acceptance by the City. If the park will be owned by a participating municipality, the City may assign its right in the security to the municipality if permitted by law.

5. *Transferability.* parks impact fee credits created on or after **October 1, 1989**, are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the City Administrative Code. Credits may be used to pay or offset parks impact fees required by this Division and consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the City Council, transferable credits must be used within six years of the date created. The creation date is the date the instrument conveying legal title to the land or improvements given in exchange for credits were recorded in the City's official record book. The creation date for credits pursuant to prepayment of fees under Section 2-307 of this Code will be the date the prepayment is received by the City. If park impact fees are increased before the credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee prescribed in Section 2-306 of this Code for the particular listed use, rounded to the nearest dollar. If park impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within six years of issue will be canceled by the building official.

Any person who accepts credit in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non refund provisions and other restrictions prescribed in this Division.

6. *Use of credits.* Unless converted to transferable form pursuant to subsection (A)(7) of this Section, park impact fee credits created prior to **October 1, 1989**, must be used on a first applied for, full credit basis. This rule applies to permits

requested on any part of the original tract. For purposes of subsections (A)(6) and (A)(7) of this Section, "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owns the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering pre-October 1, 1989 credits, the building official may rely upon apparent authority; but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.

7. *Conversion of credits.* Credits created prior to October 1, 1989, may be converted to transferable form unless conversion is prohibited by the conditions of a development order issued pursuant to Florida Statutes Chapter 380, or some other participating municipality, state, county or city development approval. The conversion must be accomplished by an agreement between the City and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the City from claims made by other persons asserting an interest in the pre-October 1, 1989 credits.
8. Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the

transfer of legal title to the land or improvements and pay the impact fees required by this Division.

- B. FeePAYERS claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and if so, the amount of credits.
- C. Credits must be claimed by the feePAYER at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feePAYER.
- D. Once used, credits will be canceled and may not be reestablished even if the permit for which they were used expires without construction.
- E. Any person seeking credits for dedication of land must meet with the City Attorney or designee, division of planning and construction, and City lands staff to seek agreement on appraisal methodology and assumptions before preparing appraisals for valuation of land to be dedicated.

§2-315. APPEALS.

Any decision made by the City Manager or designee, or by the building official, in the course of administering this Division may be appealed in accordance with those procedures set forth in Chapter 4 (Zoning) of this Code for appeals of administrative decisions. So as to provide continuity in the interpretation and administration of this Division, every interlocal agreement made pursuant to this Division must specifically incorporate this appeal procedure; and each participating municipality will agree to be bound by the results of the administrative appeal. These interlocal agreements will provide further that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the City, at its expense, unless the municipality elects to provide the defense of the case.

**§2-316. ENFORCEMENT OF DIVISION;
PENALTY; FURNISHING FALSE
INFORMATION.**

A violation of this Division is punishable according to Section 1-5 of this Code; however, in addition to or in lieu of any criminal prosecution, the City, or any parks impact fee payer, has the power to sue for relief in civil court to enforce the provisions of this Division. Knowingly furnishing false information to the City Manager or designee, the building official or any municipal official who is charged with the administration of this Division on any matter relating to the administration of this Division will constitute a violation thereof.

§2-317--2-340. RESERVED.

**DIVISION 4. COMMUNITY PARKS
IMPACT FEE**

§2-341. STATUTORY AUTHORITY.

The City Council has the authority to adopt this Division pursuant to Article VIII of the constitution of the state, Florida Statutes Chapter 166 and Florida Statutes §§163.3201, 163.3202 and 380.06(16).

§2-342. APPLICABILITY OF DIVISION.

This Division shall apply to the incorporated area of the City which enters into an interlocal agreement with the City to collect community parks impact fees during the term of such agreement.

**§2-343. INTENT AND PURPOSE OF
DIVISION.**

- A. This Division is intended to implement and be consistent with the City of Bonita Springs Comprehensive Plan.
- B. The purpose of this Division is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide community parks in the City as contemplated by the City of Bonita Springs Comprehensive Plan.

§2-344. RESERVED.

§2-345. IMPOSITION.

- A. Except as provided in Sections 2-352 through 2-354 of this Code, any person who, after **September 16, 1985**, seeks to develop land by applying to the City for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order to make an improvement to land for one of the uses specified in Section 2-346 of this Code will be required to pay a community parks impact fee in the manner and amount set forth in this Division.
- B. No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to Section 2-346 of this Code will be issued by the City unless and until the community parks impact fee required by this Division has been paid.
- C. In the case of structures, mobile homes or park trailers moved from one location to another, a community parks impact fee will be collected for the new location if the structure, mobile home or park trailer is a type of land development listed in Section 2-346 of this Code, regardless of whether community parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no community parks impact fee will be owed for the replacement use. In every case, the burden of proving past payment of community parks impact fees or equivalency of use rests with the fee payer.

§2-346. COMPUTATION OF AMOUNT.

- A. At the option of the fee payer, the amount of the community parks impact fee may be determined by the schedule set forth in this subsection. 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.

| <u>Land Use Type Living Unit</u> | <u>Total Community Parks Impact Fee per Unit at 100% of Actual Full Cost (rounded to nearest dollar)</u> |
|--|--|
| Single-family residence | \$619.00 |
| Multiple-family building, duplex, two-family attached or townhouse | \$408.00 |
| Mobile home | \$439.00 |
| Timeshare | \$867.00 |
| Hotel/motel room | \$417.00 |
| Recreational vehicle site | \$417.00 |

- 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 community parks impact fee shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.
- C. If the community parks impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or paid, whichever is applicable. If community parks impact fees are owed, no participating municipality or City permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid, and the building official may bring any action permitted by law or equity to collect unpaid fees.
- D. The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, at his option, submit evidence to the City Manager or designee indicating that the fees set out in subsection (A) of this Section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and

submitted in accordance with the City Administrative Code, the City Manager or designee may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the City of Bonita Springs Comprehensive Plan for community parks.

§2-347. PAYMENT.

- A. The feepayer must pay the community parks impact fee required by this Division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed. No building permit, mobile home move-on permit or recreational vehicle development order may be issued for development listed in Section 2-346(A) of this Code by the City until the fee has been paid.
- B. In lieu of cash, up to 97 percent of the community parks impact fee may be paid by the use of credits created in accordance with the provisions of Sections 2-352 and 2-354 of this Code.
- C. Participating municipalities must remit community parks impact fee collections to the City at least once each month, less the amounts retained pursuant to Section 2-350(D) of this Code, unless another method is specified in an appropriate interlocal agreement.
- D. All funds collected pursuant to this Division must be promptly transferred for deposit into the community parks impact fee trust fund to be held in separate accounts as determined in Section 2-349 of this Code and used solely for the purposes specified in this Division.

§2-348. BENEFIT DISTRICTS ESTABLISHED.

There are hereby established eight community parks impact fee benefit districts as shown in Appendix L. Subdistricts may be created by interlocal agreement.

§2-349. TRUST FUNDS.

- A. There are hereby established eight community parks impact fee trust funds, one for each community parks impact fee benefit district established in Section 2-348 of this Code. Subsidiary accounts may be established for subdistricts created by interlocal agreement.
- B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 2-350 of this Code.

§2-350. USE OF FUNDS.

- A. Funds collected from community parks impact fees shall be used for the purpose of capital improvements for community parks. Except as provided in subsection (C) of this Section, community parks impact fee collections, including any interest earned thereon, less administrative costs retained pursuant to subsection (D) of this Section, shall be used exclusively for capital improvements for community parks within or for the benefit of the community parks impact fee benefit district in which the funds were collected. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for community parks. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby shall be divided and segregated in such a fashion that the amount of such proceeds reserved for community park purposes bears the same ratio to the total funds collected that the community parks impact fee funds used or pledged bear to the total funds used or pledged.
- B. Each fiscal period the City Manager or designee shall, after consultation with participating municipalities and consistent with the provisions of any interlocal agreements made with them, present to the City Council a proposed capital improvement program for community parks, assigning funds, including any accrued interest, from the several community parks impact fee trust

funds to specific community park projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same community parks impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this Division.

- C. Unless prohibited by an appropriate interlocal agreement, monies placed in one community parks impact fee trust fund may be borrowed and placed in another community parks impact fee trust fund so long as the City Council first determines in a public meeting that such loans will not disrupt or otherwise alter the timing of provision of capital facilities to the lending district and will be repaid from specifically identified revenue sources within two years, either from the borrowing district or from some other source, with interest at a rate established by the council at the time it authorizes the loan; provided, however, that, if the interest is to be paid from community parks impact fees collected in the borrowing district, the council first finds that the amount of such interest so paid will be equal to or less than the benefit given to feepayers in the borrowing district by virtue of the earlier provision of capital facilities in the borrowing district made possible by virtue of the loan. So as to secure repayment of the loan on the terms established for it by the council, the motion authorizing the loan implicitly shall include direction and authorization to the City's fiscal officers to perform all acts necessary to comply with the loan terms. Loans shall not be renewed.
- D. The City collecting community parks impact fees shall be entitled to retain up to three percent of the community parks impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee, to offset the costs of administering this Division.

§2-351. REFUND OF FEES PAID.

- A. If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered, and is therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has been commenced, then the feepayer shall

be entitled to a refund of the community parks impact fee paid as a condition for its issuance, except three percent of the fee paid, which shall be retained as an administrative fee to offset the costs of processing the refund. Subject to the limitations set forth in subsection (B) of this Section, the feepayer shall be entitled to a refund equal to 97 percent of the community parks impact fee paid. No interest shall be paid to the feepayer on refunds due to noncommencement.

- B. No refund shall be allowed for any expired permit or development order which was obtained with the use of credits, except for that portion of the community parks impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (A) of this Section shall be deducted from the portion of the fee which was not paid by credit.
- C. Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the community parks impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

§2-352. PREPAYMENT OF FEES.

If required or specifically permitted by the terms of a development order adopted pursuant to Florida Statutes Chapter 380, or by an agreement made by the City pursuant to its home rule powers granted in Article VIII of the Constitution of the State and Florida Statutes §125.01, or by a development agreement made pursuant to Florida Statutes §163.3220-163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay community parks impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the amount of community parks impact fees prepaid. The City will issue credit equal to the prepayment subject to the express terms of the development order, agreement or development agreement.

§2-353. EXEMPTIONS.

- A. The following are exempted from payment of the community parks impact fee:
 - 1. Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
 - 2. The construction of accessory buildings or structures that will not produce additional living units.
 - 3. The replacement of a(n) existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before **September 16, 1985**.
 - 4. The replacement of a building, mobile home, park trailer or structure, which was constructed or placed after **September 16, 1985**, where the correct community parks impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided no additional living units will be produced than those produced by the original use of the land.
 - 5. An amendment to a recreational vehicle development order, provided the amendment does not increase the number of recreational vehicle units permitted.
 - 6. A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
 - 7. A building permit, mobile home move-on permit or recreational vehicle development order for which the community parks impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
 - 8. A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an additional living unit.

9. Building permits that obtain a banked impact fee credit from the City of Bonita Springs. The City hereby grants to itself the authority to bank impact fee credits as a result of any public improvement project occurring on or after April 15, 2000 within the City's boundary. The City may bank credits when buildings, mobile home, park trailer or structures are physically removed but not replaced in the same location. City Council, by resolution, may use the banked impact fee credit for a city operated affordable housing program, or may grant non-profit corporations who are building affordable housing credits specified by amount and type, if available in the City's impact fee bank.
- B. Exemptions must be claimed by the fee payer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions not so claimed will be deemed waived by the fee payer.

§2-354. CREDITS.

- A. Credits are subject to the following:
1. *Prohibition.* No credit will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with Section 2-306(D) of this Code.
 2. *Capital improvement to community park facilities.* All other capital improvements for approved community parks may generate parks impact fee credits in amounts to be established pursuant to subsection (A)(3) of this Section or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the City, unless otherwise provided for in an appropriate interlocal agreement, or unless the improvement is required under a participating municipality, state, county or city development or zoning approval, in which case credits will be given to the extent required by law.

The City will issue community park impact fee credits for the value of critical occupied habitat in accordance with Section 3-474(E)(3) of this Code when the size of habitat preserved on a given project exceeds the open space requirements of Chapter 3 (Design Standards).

3. *Conditions of credit approval.* Credit for community park capital improvement construction or land dedication is subject to the following:
 - a. *Capital improvement construction.* When a person requests credit for construction of an approved community park facility, he must submit a project description in sufficient detail and with complete cost estimates prepared by qualified professionals so as to enable the City Manager or designee to verify the cost estimates and thereby determine the appropriate amount of credit to recommend to the City Council.
 - b. *Land dedication.* When a person requests credit for land dedication for approved community park facilities, he must present the following:
 - i. A survey of the land to be dedicated, certified by a professional land surveyor or registered land surveyor, each of whom are licensed in this state;
 - ii. A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
 - iii. An ALTA Form B title insurance policy in the amount equal to the approved value of the credits. This policy must be issued by a company satisfactory to the City Attorney or designee and verify that the proper deed will convey unencumbered fee simple title to the appropriate governmental body;
 - iv. Property appraisals prepared by qualified professionals that

appraise the land as part of the whole development of regional impact, planned development, or parent parcel; and

- v. A certified copy of the most recent assessment of the property for tax purposes.

These submittals will be reviewed by the City Manager or designee in making the decision to recommend credits to the City Council.

Except where a dedication is made pursuant to a condition of zoning approval or development of regional impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the land in question is subject to a valid agreement, zoning approval, or development order that prescribes a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site related improvement and the condition does not specifically prescribe otherwise, the land will be valued based on the value of the land as it existed prior to the approval that contains the condition of dedication. The City Manager or designee retain the right to independently determine the amount of credit to be recommended by securing other property appraisals for those improvements or land dedications. In every case, community parks impact fee credits will be calculated so as to be consistent with Florida Statutes §380.06(16).

4. *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the appropriate governmental body for maintenance or when the feepayer posts security for the costs of the construction. Credits for land dedication will be created when the title to the land has been

accepted by the appropriate governmental body and recorded in the official records of the Clerk of Circuit Court. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement, must be posted with the City Council, made payable to the City in an amount approved by the City Manager or designee equal to 110 percent of the full cost of construction. If the park construction project will not be completed within one year of the acceptance of the offer by the City, the amount of the security will be increased by 10 percent, compounded for each year of the life of the security. The security must be reviewed and approved by the City Attorney or designee prior to acceptance by the City. If the park will be owned by a participating municipality, the City may assign its right in the security to the municipality if permitted by law.

5. *Transferability.* Community parks impact fee credits created on or after **October 1, 1989**, are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the City Administrative Code. Credits may be used to pay or offset community parks impact fees required by this Division and consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the City Council, transferable credits must be used within six years of the date created. The creation date is the date the instrument conveying legal title to the land or improvements given in exchange for credits were recorded in the City's official record book. The creation date for credits pursuant to prepayment of fees under Section 2-307 of this Code will be the date the prepayment is received by the City. If community park impact fees are increased before the credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee prescribed in Section 2-306 of this Code for the particular listed use, rounded to the nearest dollar. If community park impact fees are decreased, unused transferable

credits will not decrease in value. Credits not used within six years of issue will be canceled by the building official.

Any person who accepts credit in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non refund provisions and other restrictions prescribed in this Division.

6. *Use of credits.* Unless converted to transferable form pursuant to subsection (A)(7) of this Section, community park impact fee credits created prior to **October 1, 1989**, must be used on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of subsections (A)(6) and (A)(7) of this Section, "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owns the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering pre-**October 1, 1989** credits, the building official may rely upon apparent authority; but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.
7. *Conversion of credits.* Credits created prior to **October 1, 1989**, may be converted to transferable form unless conversion is prohibited by the conditions of a development order issued pursuant to Florida Statutes Chapter 380, or some other participating municipality, state, county or city development approval. The

conversion must be accomplished by an agreement between the City and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the City from claims made by other persons asserting an interest in the pre-**October 1, 1989** credits.

8. Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this Division.
- B. Feepayers claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and if so, the amount of credits.
- C. Credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feepayer.
- D. Once used, credits will be canceled and may not be reestablished even if the permit for which they were used expires without construction.
- E. Any person seeking credits for dedication of land must meet with the City Attorney or designee, division of planning and construction, and City lands staff to seek agreement on appraisal methodology and assumptions before preparing appraisals for valuation of land to be dedicated.

§2-355. APPEALS.

Any decision made by the City Manager or designee, or by the building official, in the course of administering this Division may be appealed in accordance with those procedures set forth in **Chapter 4** (Zoning) for appeals of administrative decisions. So as to provide continuity in the interpretation and administration of this Division,

every interlocal agreement made pursuant to this Division must specifically incorporate this appeal procedure, and each participating municipality will agree to be bound by the results of the administrative appeal. These interlocal agreements will provide further that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal shall be defended by the City, at its expense, unless the municipality elects to provide the defense of the case.

**§2-356 ENFORCEMENT OF DIVISION;
PENALTY; FURNISHING FALSE
INFORMATION.**

A violation of this Division is punishable according to Section 1-5 of this Code; however, in addition to or in lieu of any criminal prosecution, the City, or any community parks impact fee payer, has the power to sue for relief in civil court to enforce the provisions of this Division. Knowingly furnishing false information to the City Manager or designee, the building official or any other municipal official who is charged with the administration of this Division on any matter relating to the administration of this Division will constitute a violation thereof.

§2-357--2-380. RESERVED.

**DIVISION 5. FIRE PROTECTION AND
EMERGENCY MEDICAL SERVICES
IMPACT FEE**

§2-381. STATUTORY AUTHORITY.

The Bonita Springs City Council has the authority to adopt this Division pursuant to Article VIII of the constitution of the state, Florida Statutes Chapter 166 and Florida Statutes §163.3201, 163.3202 and 380.06(16).

§2-382. APPLICABILITY OF THE DIVISION

With respect to fire impact fees, this Division applies to those areas that are provided fire protection by the Bonita Springs Fire Control and Rescue District, an independent political subdivision of the State of Florida.

**§2-383. INTENT AND PURPOSE OF
DIVISION.**

- A. This Division is intended to implement and be consistent with the City of Bonita Springs Comprehensive Plan.
- B. The purpose of this Division is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide fire protection and emergency medical services in the City as contemplated by the City of Bonita Springs Comprehensive Plan.
- C. The intent and purpose of this Division is to provide the political subdivision of the Bonita Springs Fire Control and Rescue District within the City of Bonita Springs with the option to participate in an impact fee program administered by the City of Bonita Springs. However, this Division is not intended to preclude the ability of the fire district to decline the option to participate in the program or terminate an existing interlocal agreement and establish their own impact fee regulations in accordance with the powers granted under Florida law or the district's special act.

§2-384. RESERVED.

§2-385. IMPOSITION

- A. Except as provided in Sections 2-392 through 2-395 of this Code, any person who, on or after December 31, 1999, seeks to develop land by applying to the City for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order to make an improvement to land for one of the uses specified in Section 2-386 of this Code will be required to pay a fire impact fee in the manner and amount set forth in this Division.
- B. No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to Section 2-386 of this Code will be issued by the City unless and until the fire impact fees required by this Division have been paid.

C. In the case of structures, mobile homes or park trailers moved from one location to another, fire impact fees will be collected for the new location if the structure, mobile home or park trailer is a type of land development listed in Section 2-386 of this Code, regardless of whether impact fees had been paid at the old location, unless the new location is beyond the applicability of this Division as set forth in Section 2-382 of this Code or the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no fire impact fee will be owed for the replacement use. For purposes of this subsection, equivalent use shall mean no increase in existing development within the Bonita Springs Fire Control and Rescue District service area, only relocation or restoration. In every case, the burden of proving past payment of fire impact fees or equivalency of use rests with the feepayer, with the Fire District issuing a determination of equivalent use.

D. The fee schedules set forth in Section 2-386 of this Code were amended in January 2003. The fee schedule in effect prior to January 28, 2003 will remain in effect until the new fees take effect, as follows:

1. *Decreases.* Any decrease from the existing fee for a particular use type will become effective February 10, 2003.
2. *Increases*
 - a. Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or before February 28, 2003 will be assessed fire impact fees based upon the fee schedule applicable on January 27, 2003, if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before February 28, 2003.
 - b. Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted after February

28, 2003 and such permits or development orders issued after April 28, 2003 will be subject to the amended impact fee schedule.

3. *When due and payable.* Under this Article, impact fees become due and payable at the time of building permit issuance. For purposes of this Division, a building permit or mobile home move-on 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 fees have been paid.

Note: 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.

§2-386. COMPUTATION OF AMOUNT.

- A. At the option of the feepayer, the amount of the fire impact fees may be determined by the schedules shown in this subsection. The reference in the schedules to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, non-common or other forms of net square footage. The reference in the schedules to recreational vehicles refers to the number of recreational vehicle sites permitted by the applicable final development order. If a building permit is requested for a building with mixed uses, as defined in Chapter 9 (Definitions) of this Code, then the fee will be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. If a permit application involves a type of development not specified on the schedule, then the City Manager or designee will use the fee applicable to the most nearly comparable type of land use on the schedule.

Table 1.

**FIRE IMPACT FEE SCHEDULE FOR THE
BONITA SPRINGS FIRE CONTROL AND
RESCUE DISTRICT**

| Land Use | Development Unit | Fire Impact Fee Per Unit |
|--|-------------------------|---------------------------------|
| Single-family residence or mobile home on individual lot | Dwelling | \$373 |
| Multi-family | Dwelling | \$235 |
| Mobile home or recreational vehicle in mobile home/RV park | Space | \$235 |
| Hotel/motel | Room | \$380 |
| Retail | 1,000 sq. ft. | \$477 |
| Office | 1,000 sq. ft. | \$224 |
| Public or institutional use | 1,000 sq. ft. | \$477 |
| General industrial | 1,000 sq. ft. | \$112 |
| Public or private warehouse | 1,000 sq. ft. | \$60 |

- 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 fire impact fees will be based upon the net increase in the impact fees for the new use as compared to the previous use. However, should the change of use, redevelopment or modification result in a net decrease, no refunds or credits for past impact fees paid will be made or created.
- C. If fire impact fees have been calculated and paid based on error or misrepresentation, then they will be recalculated and the difference refunded to the original feepayer or paid to the City, whichever is applicable. If fees are owed to the City, no municipal permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid. The building official may

bring any action permitted by law or equity to collect unpaid fees.

- D. The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, at his option, submit evidence to the City Manager or designee indicating that the fees set out in subsection (A) of this Section are not applicable to the particular development. Based upon convincing and competent evidence, prepared and submitted in accordance with the City Administrative Code, the City Manager or designee may adjust the fees accordingly.
- E. In the case of any building or structure restricted to private use only or that will not be fully open to the public, the full impact fees imposed by this Division for similar buildings or structures that are fully open to the public will be charged.
- F. The impact fee schedules set forth in Section 2-386 of this Code will be reviewed every three years following the effective date of this Division and updated if necessary. At the City’s request, the participating district will provide the documentation necessary to enable the City to properly review and update the fee schedules.

§2-387. PAYMENT.

- A. The feepayer must pay the fire impact fees required by this Division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fees are imposed, except as provided in Sections 2-392 through 2-395 of this Code. No building permit, mobile home move-on permit or recreational vehicle development order may be issued by the City until the fee has been paid, except as provided in Sections 2-394 and 2 -395 of this Code.
- B. In lieu of cash, up to 100 percent of the fire impact fee may be paid with credits created in accordance with the provisions of Section 2-395 of this Code.
- C. All funds collected pursuant to this Division will be properly identified by fire impact fee benefit districts and promptly transferred for deposit into the appropriate fire trust funds to

be held in separate accounts as determined in Section 2-389 of this Code, and used solely for the purposes specified in this Division.

**§2-388. BENEFIT DISTRICTS
ESTABLISHED.**

There is hereby established a fire impact fee benefit district for the Bonita Springs Fire Control and Rescue District service area.

§2-389. TRUST FUNDS

- A. There is hereby established a fire impact fee trust fund, for the fire impact fee benefit district established in Section 2-388 of this Code.
- B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 2-390 of this Code.

§2-390. USE OF FUNDS

- A. Funds collected from fire impact fees must be used for the purpose of capital improvements to and expansion of fire protection services. Fire impact fee collections, including any interest earned thereon, less administrative costs retained, will be used exclusively for capital improvements or expansion within or for the benefit of the fire impact fee benefit district from which the funds were collected. These impact fee funds must be segregated from other kinds and expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of land acquisition and capital improvements to and expansion within or for the benefit of the fire impact fee benefit district from which the funds were used or pledged. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, then the proceeds raised thereby must be divided and segregated in a manner that will cause the amount of the proceeds reserved for the benefit of the participating fire impact fee benefit district to bear the same ratio to the total funds collected as the amount of the participating fire impact

fee benefit district funds used or pledged bears to the total funds used or pledged.

- B. Monies placed in the fire impact fee trust fund may not be borrowed.
- C. The City collecting fire impact fees is entitled to charge and collect an amount equal to up to three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this Division. This administrative charge is in addition to the impact fee amount required by this Division and is not required to be used for purposes of capital improvements. The applicant is responsible for payment of the administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

§2-391. REFUND OF FEES PAID.

- A. If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked, voluntarily surrendered, or otherwise becomes void, and no construction or improvement of land (including moving a mobile home onto land) has been commenced, then the feepayer is entitled to a refund of the fire impact fees paid as a condition for its issuance, except that up to three percent of the impact fees paid will be retained as an administrative fee to offset the costs of processing the refund. This administrative fee is in addition to the administrative charge collected at the time of fee payment. No interest will be paid to the feepayer on refunds due to noncommencement.
- B. Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the fire impact fees were paid will, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

§2-392. PREPAYMENT OF FEES (FIRE).

If required or specifically permitted by the terms of a development order adopted pursuant to Florida Statutes Chapter 380, or by an agreement made by the City pursuant to its home rule powers

granted in Article VIII of the Constitution of the State and Florida Statutes §125.01, or by a development agreement made pursuant to Florida Statutes §163.3220-163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay fire impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the fire impact fee benefit district in question and the amount of fire impact fees prepaid. The City will issue credit or credits equal to the prepayment subject to the express terms of the development order, agreement or development agreement.

§2-393. DEFERRAL OF FEES.

A. Deferrals will be limited to the following:

1. Persons seeking building permits for a shell building as defined herein may, at their option, defer payment of fire impact fees until issuance of any interior completion permits.
2. No interior completion permit will be issued until the applicant pays the corresponding fire impact fee that is due, or demonstrates to the building official that the fire impact fee due has already been paid for the unit(s) to be completed.

B. Deferrals must be claimed by the feepayer at the time of the application for a shell building permit. Any deferrals not so claimed will be deemed waived by the feepayer.

§2-394. EXEMPTIONS.

The following are exempted from payment of the fire impact fees:

1. Alteration or expansion of an existing building or use of land where no additional living units will be produced, where the use is not changed, and where no additional demand for fire protection will be produced.
2. The construction of accessory buildings or structures that will not produce additional living units and where no additional demand for fire protection will be produced.

3. The replacement or reconstruction of a(n) existing lawfully permitted building, mobile home, park trailer or structure at the same site, where the original permit was issued on or before October 1, 1989.
4. The replacement of a building, mobile home, park trailer or structure, which was constructed or placed after October 1, 1989 and where the correct fire impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location, provided no additional living units or fire protection demands will be produced than those produced by the original use of the land.
5. An amendment to a recreational vehicle development order, provided the amendment does not increase the number of recreational vehicle units permitted or increase the need for fire protection.
6. A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
7. A building permit, mobile home move-on permit or recreational vehicle development order for which the fire impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
8. A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an increased need for fire protection.
9. Building permits that obtain a banked impact fee credit from the City of Bonita Springs. The City hereby grants to itself the authority to bank impact fee credits as a result of any public improvement project occurring on or after April 15, 2000 within the City's boundary. The City may bank credits when buildings, mobile home, park trailer or structures are physically removed but not replaced in the same location. City Council, by resolution, may use the banked impact fee

credit for a city operated affordable housing program, or may grant non-profit corporations who are building affordable housing credits specified by amount and type, if available in the City's impact fee bank. Any new development upon a site for which credits were banked under this provision will be subject to future impact fees.

§2-395. CREDITS

A. Credits are subject to the following:

1. *Capital improvement to fire protection services.* All other capital improvements for fire protection services may generate fire impact fee credits in amounts to be established pursuant to subsection (A)(2) of this Section. The right to determine whether a capital improvement will be accepted for credit purposes lies exclusively with the entity providing the service; however, the right to determine whether the value of the capital improvement will be approved for credit purposes lies exclusively with the City, unless otherwise provided in an appropriate interlocal agreement.
2. *Conditions of credit approval.* Credit for fire protection equipment or facility construction or land dedication is subject to the following:
 - a. *Fire equipment or facility construction.* When a person requests credits for purchase or construction of fire equipment or facilities, he must submit a project description in sufficient detail and with complete cost estimates prepared by qualified professionals so as to enable the City Manager or designee and Fire Chief to verify the cost estimates and thereby determine the appropriate amount of the credit and determine the acceptability for credit. That person must also submit written acknowledgement from the entity which will acquire the equipment or facility that the entity intends to accept the equipment or facility.

- b. *Land dedication.* When a person requests credit for land dedication, he must present the following documents to the City Manager or designee and Fire Chief:
 - i. A survey of the land to be dedicated, certified by a professional surveyor and mapper registered and licensed in the state;
 - ii. A specimen of the deed he proposes to use to convey title to the appropriate governmental body;
 - iii. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits. This policy must be issued by a company satisfactory to the City Attorney or designee and verify that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
 - iv. Property appraisals prepared by qualified professionals that appraise the land as part of the whole development of regional impact, planned development or parent parcel; and
 - v. A certified copy of the most recent assessment of the property for tax purposes.

These submittals will be reviewed by the City Manager or designee in making the decision to approve credits.

Except where a dedication is made pursuant to a condition of zoning approval or development of regional impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the land in question is subject to a valid agreement, zoning approval or development order that prescribes a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition

of zoning or other development approval and is not a site related improvement and the condition does not specifically prescribe otherwise, the land will be valued based upon the value of the land as it existed prior to the approval that contains the condition of dedication. The City Manager or designee retain the right to independently determine the amount of credit to be recommended by securing other property appraisals for those improvements or land dedications. In every case, fire impact fee credits must be calculated so as to be consistent with Florida Statutes §380.06(16).

3. *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the appropriate governmental body for maintenance or when the feepayer posts security for the costs of the construction. Credits for land dedication will be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the Clerk of Circuit Court. Security in the form of cash, a performance bond, an irrevocable letter of credit or escrow agreement must be posted with the Bonita Springs City Council, made payable to the City in an amount approved by the City Manager or designee equal to 110 percent of the full cost of construction. If the construction project will not be completed within one year of the acceptance of the offer by the City, the amount of the security will be increased by ten percent, compounded for each year of the life of the security. The security must be reviewed and approval by the City Attorney or designee prior to acceptance by the City. If the improvement is to be owned by the fire district, the City may assign its rights in the security to the fire district if permitted by law.
4. *Transferability.* Fire impact fees created on or after October 1, 1989 are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the City Administrative Code. Credits may be used to pay or offset the fire impact fees in the same fire impact fee

district in which they are earned, consistent with the interlocal agreements made with the fire district. Unless a longer period is specifically authorized by the Bonita Springs City Council, transferable credits must be used within six years of the date created. The creation date is the date the instrument conveying legal title to the land or improvements given in exchange for credits was recorded in the City's official record books. If fire impact fees are increased before credits are used, the unused transferable credits will be increased at the same time they are used in the same percentage that the fee prescribed in Section 2-366 of this Code for the particular listed use, rounded to the nearest dollar. For example, see Exhibit A of Ordinance No. 90-14, on file with the Lee County Clerk of Court. If fire impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within six years of issue will be canceled by the building official. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, nonrefund provisions and other restrictions prescribed in this Division.

5. *Use of credits.* Unless converted to transferable form pursuant to subsection (A)(6) of this Section, fire impact fee credits created prior to **October 1, 1989**, must be used, on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of subsection (A)(5) and (A)(6) of this Section, "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owns the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule

will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested comment. In determining ownership or agency for purposes of administering pre- **October 1, 1989** credits, the building official may rely upon apparent authority, but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.

6. *Conversion of credits.* Credits created prior to **October 1, 1989**, may be converted to transferable form unless conversion is prohibited by the conditions of a development order issued pursuant to Florida Statutes Chapter 380 or some other participating municipality, state, or county government, City development approval. The conversion must be accomplished by an agreement between the county and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the City from claims made by other persons asserting an interest in the pre-**October 1, 1989** credits.
7. Any person, who offers land or improvements in exchange for credits, may withdraw the offer prior to the transfer of legal title to the land or improvements and may pay the impact fees required by this Division.
- B. Feepayers claiming credits must submit documentation sufficient to permit the building official to determine the credits claimed are due and, if so, the amount of credits.
- C. Credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Credits not so claimed will be deemed waived by the feepayer.

- D. Once used, credits must be canceled and may not be reestablished even if the permit for which they are used expires without construction.
- E. Any person seeking credits for dedication of land must meet with the City Attorney or designee and City lands staff to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.

§2-396. APPEALS.

Any decision made by the City Manager or designee, or by the building official, in the course of administering this Division may be appealed in accordance with those procedures set forth in **Chapter 4** (Zoning) of this Code for appeals of administrative decisions. So as to provide continuity in the administration of this Division, every interlocal agreement made pursuant to this Division must specifically incorporate this appeal procedure, and the fire district agrees to be bound by the results of the administrative appeal. These interlocal agreements will provide further that if the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the City, at its expense, unless the district elects to provide the defense of the case.

§2-397. ENFORCEMENT OF DIVISION; PENALTY; FURNISHING FALSE INFORMATION.

A violation of this Division is punishable according to Section 1-5 of this Code; however, in addition to or in lieu of any criminal prosecution, the City, or any fire impact feepayer, has the power to sue for relief in civil court to enforce the provisions of this Division. Knowingly furnishing false information to the City administrator, his designee, the building official or any fire district official who is charged with the administration of this Division on any matter relating to the administration of the division will constitute a violation thereof.

§2-398--2-399. RESERVED.

DIVISION 6. SCHOOL IMPACT FEES

§2-400. STATUTORY AUTHORITY.

The City Council has the authority to adopt this Division pursuant to Article VIII of the constitution of the state, Florida Statutes Chapter 166 and Florida Statutes §163.3201, 163.3202 and 380.06(16).

§2-401. APPLICABILITY OF DIVISION.

This Division applies in the City of Bonita Springs, Lee County, Florida. The City is required to collect impact fees from new development within their jurisdictions.

§2-402. INTENT AND PURPOSE OF DIVISION.

- A. This Division is intended to implement and be consistent with the City of Bonita Springs Comprehensive Plan.
- B. The purpose of this Division is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide adequate public educational facilities in the city as contemplated by the City of Bonita Springs Comprehensive Plan.

§2-403. IMPOSITION.

- A. Except as provided in Section 2-411 of this Code, any person who seeks to develop land by applying to the city for the issuance of a building permit, mobile home move-on permit or mobile home park development order for the purpose of making an improvement to land for one of the uses specified in Section 2-404 of this Code, is required to pay a school impact fee in the manner and amount set forth in this Division.
- B. No building permit, mobile home move-on permit or mobile home park development order for any activity requiring payment of an impact fee pursuant to Section 2-404 of this Code may be issued by the city until the

school impact fee required by this Division has been paid.

- C. In the case of structures or mobile homes that are moved from one location to another, a school impact fee will be collected for the new location if the structure or mobile home constitutes one of the land development uses listed in Section 2-404 of this Code, regardless of whether school impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure or mobile home so moved is replaced by an equivalent use, no school impact fee is owed for the replacement use. In every case, the burden of proving past payment of school impact fees or equivalency of use rests with the Feepayer.

§2-404. COMPUTATION OF AMOUNT.

- A. At the option of the Feepayer, the amount of the school impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home refers to the number of mobile homes or mobile home park sites that are permitted by the applicable final development order or mobile home move on permit as appropriate.

| <i>Land Use Type</i> | <i>School Impact Fee per Unit</i> |
|--|-----------------------------------|
| Single-family residence | \$2,232 |
| Multiple-family building, duplex, two-family attached or townhouse | \$691 |
| Mobile home | \$425 |

- 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 mobile home park development order, the school 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.
- C. If the school 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 school 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.

- D. The impact fee schedule set forth in Section 2-406(A) of this Code will be administratively reviewed and re-analyzed every three years. As a result of this review, city staff is authorized and directed to pursue amendments to the impact fee schedule consistent with the results of the review and re-analysis.

§2-405. INDEPENDENT FEE CALCULATION.

- A. If the person applying for a building permit, mobile home move-on permit or mobile home park development order opts not to follow the fee schedule set forth in Section 2-404 of this Code, then that person has the option to submit an independent fee calculation study in accordance with this Section.
- B. Submittal of an independent fee calculation study by the Feepayer does not exempt the Feepayer from paying the school impact fees prior to the issuance of a building permit, mobile home move-on permit, or mobile home park development order as those terms are defined.
- C. The Feepayer must inform the City Manager or designee and the superintendent of schools in writing, of the intent to submit an independent fee calculation study before the issuance of the permits described in subsection 2-405(A) of this Code. The City Manager or designee will then schedule a pre-application meeting with the Feepayer.
- D. Before beginning the independent fee calculation study, the Feepayer or representative will attend a pre-application meeting with the City Manager or designee and the superintendent of schools. The purpose of the pre-application meeting is to discuss the procedures for preparation of the independent fee calculation study, the methodology to be employed, and the standards to be met.
- E. The City Manager or designee will prepare a written summary of the results of the preapplication meeting regarding methodology, required forms, documentation or procedures (which may not constitute a waiver of ordinance provisions). The City Manager or designee will send a copy of this summary to the Feepayer, the Lee County School Board and the county, if applicable. The Feepayer must provide written confirmation as to receipt and acceptance of the summary to the City Manager or designee.
- F. If the Feepayer wishes to waive the pre-application meeting, it must be done in writing. Feepayers who waive the pre-application meeting waive the right to raise methodological or procedural issues regarding the study at a subsequent time.
- G. The independent fee calculation study must measure the impact of the specific development proposed on the Lee County Public Schools educational system.
- H. The independent fee calculation study must follow the methodologies and formats agreed upon during the pre-application meeting and be in accord with the documentation or methodology required by this Section.
- I. The methodology used to prepare the independent fee calculation must be consistent with the methodology used to develop the generalized impact fee schedule and verify that the projected impact on the Lee County Public Schools educational system of the proposed development is less than the projected impact used in establishing the fee schedule in Section 2-404 of this Code because of the uniqueness in character of the proposed development.
- J. The independent fee calculation study must be prepared and presented by a qualified professional. The methodology must be consistent with best professional practice and support the central claim of the study.

The study must provide all necessary supporting documentation and information. Failure to adhere to best professional practice standards is a basis for rejection of the study. The Feepayer's submission must certify that the study complies with best professional practices.

- K. The Feepayer must submit the study to the City Manager or designee who will forward the study to the Lee County School Board and the county, if applicable.
- L. The City Manager or designee will have 30 days from the date the study is received to provide written notice to the Feepayer of deficiencies or defects in the study, to approve the study and authorize an appropriate fee adjustment or to reject the conclusions of the study and deny the fee adjustment. This notice must be sent certified mail, return receipt requested. If this notice is not given within 30 days, the study will be considered sufficient and the fee adjusted as if the study had been approved. If the study is found defective or deficient the 30 day review period will begin again with the submission of a new or modified study. If the Feepayer does not respond to the City Manager or designee regarding a finding of deficiency within 30 days of the date notice of a deficiency is sent, the City Manager or designee will consider the independent fee calculation study withdrawn and all claims to a fee adjustment waived. All permits described in subsection 2-403(A) of this Code subsequently applied for must be accompanied by the school impact fees established by the fee schedules. The 30 day sufficiency review will begin when the City Manager or designee receives and date stamps the independent fee calculation study.
- M. During the initial 30-day period, the Lee County School Board will also review the independent fee calculation study for sufficiency, methodology, technical accuracy, and findings. Thereafter, the School Board will make recommendations concerning the appropriate amount of the school impact fees to the City Manager or designee. Once the city approves the

independent fee calculation study and establishes the amount of the impact fee adjustment, the adjusted school impact fee will relate back to the date of the pre-application meeting. Fees paid after the pre-application meeting according to the fee schedule will be adjusted to reflect the fee approved by the city pursuant to the study. The Feepayer will receive a refund for the difference between the fee schedule and the approved fee established by the study. Refunds will be in the form of cash or school impact fee credits, depending on the original method of payment. There will be no refund of fees paid prior to the preapplication meeting. If the Feepayer waives the pre-application meeting, the adjusted school impact fee will relate back to the date the study is found sufficient for review by the City Manager or designee.

- N. It is the Feepayer's responsibility to claim a reduction in school impact fees on the basis of an approved independent fee calculation study, at the time of application for a building permit, mobile home move-on permit or mobile home park development order. No claim to a reduced fee will be accepted in advance of the approval of an independent fee study where one is required. The Feepayer must present documentation enabling the City Manager or designee to verify this claim. Where the Feepayer waived the pre-application meeting, fees paid according to the school impact fee schedule after the study is found sufficient for review will be adjusted to reflect the fee approved by the City pursuant to the study.

§2-406. PAYMENT.

- A. The Feepayer must pay the school impact fee required by this Division to the building official prior to the issuance of the building permit, mobile home move-on permit, or mobile home park development order for which the fee is imposed, except as provided in Section 2-410 of this Code. No building permit, mobile home move-on permit or mobile home park development order may be issued by the City until the impact fee has been paid, except as provided in Section 2-410 of this Code.

NOTE: Building permit applications, mobile home move-on permit applications, or mobile home park development order applications submitted on or after December 1, 2001 will be subject to the school impact fee schedule. On those applications, school impact fees are due and payable at the time of permit issuance.

Building permit or mobile home move-on permit or mobile home park development order applications submitted before December 1, 2001 will not be assessed school impact fees if the building permit, mobile home move-on permit or mobile home park development order is issued on or before March 1, 2002.

All permits and development orders issued after March 1, 2002 will be assessed impact fees in accordance with the school impact fee schedule regardless of when the application was submitted to the county.

- B. In lieu of cash, up to 100 percent of the school impact fee may be paid with credits created in accordance with the provisions of Section 2-411 of this Code.
- C. School impact fees collected by the city must be remitted to the County at least monthly. The County and the city must maintain records for each payment, the name of the Feepayer, the date of payment, the location and description of the property for which the fee was paid, the land use and number of dwelling units for which fees were paid, and the application of any credits or adjustments to the fees otherwise due. This information must be provided to Lee County and the school district in order to ensure proper record keeping for the day to day administration of the school impact fee program and also to ensure that all expenditures comply with requirements of the rational nexus test as defined in Florida case law.
- D. The county will remit to the School Board, within thirty days following the end of each calendar quarter, all school impact fees collected.
- E. All funds collected pursuant to this Division will be properly identified by the School Board and promptly recorded in the school

impact fee capital fund and used solely for the purposes specified in this Division.

§2-407. TRUST FUND ACCOUNTS.

There is hereby established a school impact fee capital fund account. Funds withdrawn from this account must be used in accordance with the provisions of Section 2-407 of this Code.

§2-408. USE OF FUNDS.

- A. Funds collected from school impact fees must be used for the purpose of capital improvements for educational facilities. Except as provided in subsection (C) of this Section, school impact fee collections, including any interest earned thereon, must be used exclusively for capital improvements for educational facilities. These impact fee funds must be segregated from other funds and be expended as provided for in this Section. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for educational facilities. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby must be divided and segregated such that the amount of the proceeds reserved for educational facility purposes bears the same ratio to the total funds collected that the school impact fee funds used or pledged bear to the total funds used or pledged.
- B. Each fiscal period the Lee County School Board will present a proposed capital improvements program for educational facilities to the Board of County Commissioners. The program must assign funds, including accrued interest, from the school impact fee capital fund to specific educational facility projects. School impact fee funds may only be expended by the School Board according to a capital improvements program that has been approved by the Board of County Commissioners. All funds must be spent in a manner that will benefit the Feepayer.

For example, so long as the School Board maintains a school choice system where students must attend a school within the zone where they reside, then all funds must be spent within the zones where they are collected. Fees collected from one school choice zone may be spent on a capital improvement in another school choice zone only if it can be demonstrated that the improvement will benefit the feepayers in the original school choice zone.

For example, the construction of magnet schools and administrative facilities that provide benefits across school choice zones. At least every three years, the School Board must submit to the County a report summarizing all expenditures of funds and demonstrating that all expenditures comply with requirements of the rational nexus test as defined in Florida case law. The first report will be due three years from the effective date of this ordinance.

- C. The County, and any municipality collecting school impact fees are entitled to charge the applicant of a permit or development order for which school impact fees are payable under this Division, an administrative fee equal to up to three percent of the school impact fees it collects. The administrative fee must be used to offset the costs of administering this Division. The administrative fee must be paid in cash.

§2-409. REFUND OF FEES PAID.

- A. If a building permit, mobile home move-on permit or mobile home park development order expires, is revoked or voluntarily surrendered, and therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has commenced, then the Feepayer is entitled to a refund of the portion of the school impact fee that was paid in cash as a condition for its issuance. A three percent administrative fee will be retained as an administrative fee to offset the costs of processing the refund. This administrative fee is in addition to the three percent administrative fee charged at the time of fee payment. No interest will be paid to the

Feepayer on refunds due to non-commencement.

- B. Funds that have not been expended or encumbered by the end of the calendar quarter immediately following ten years from the date the school impact fee was paid, will be returned to the Feepayer, with interest at the rate of six percent per annum, upon application of the Feepayer within 180 days of that date.
- C. After consulting with the City Attorney or designee, the City Manager or designee will make all decisions on requests for refunds.

§2-410. PRE-PAYMENT OF FEES.

Prepayment of school impact fees will be accepted by the County or City in accordance with the following:

- A. Prepayment is specifically required or permitted by: a development order adopted pursuant to Florida Statutes Chapter 380; An agreement made by the county pursuant to its home rule powers granted by Article VIII of the constitution of the state and Florida Statutes §125.01; A development agreement made pursuant to Florida Statutes §§163.3220-163.3243, the Florida Local Government Development Agreement Act.
- B. Prepayment is made by certified check or cashiers check accompanied by a letter identifying the amount to be prepaid and the document allowing prepayment delivered to the building official.

§2-411. EXEMPTIONS.

- A. The following are exempted from payment of the school impact fee:
 - 1. The construction of a non-residential building or structure.
 - 2. Dwelling units in subdivisions, mobile home or manufactured housing parks, and multi-family dwellings that are operated as a community for older persons, in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act

of 1995, 42 U.S.C., Section 3601 through 3619, that also prohibit persons under the age of 18 years from residing within the dwelling units on the property as a permanent resident. This restriction must be evidenced by a recorded declaration of covenants and restrictions that are not subject to revocation or amendment for a period of at least 30 years from the date of recording. The covenants and restrictions must run with the land.

3. Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
4. The construction of accessory buildings or structures that will not produce additional living units.
5. The replacement of an existing lawfully permitted building, mobile home or structure where the original permit was issued prior to December 1, 2001, provided that no additional living units will be produced than those produced by the original use of the land. However, if any such building, mobile home, or structure is destroyed, demolished or removed from the property voluntarily or involuntarily, then any replacement will be required to pay the appropriate impact fee, unless:
 - a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
 - b. construction commences within said 5-year period; and
 - c. such construction continues in good faith without abandonment, expiration or loss of permits.
6. An amendment to a mobile home park development order, provided that the amendment does not increase the number of mobile home units permitted.
7. A building permit, mobile home move-on permit or mobile home park development order that does not result in an additional living unit.

8. Any development that has already fully mitigated its school impacts as contemplated by this Section.

- B. Exemptions must be claimed by the Feepayer at the time of application for a building permit, mobile home move-on permit or mobile home park development order. Exemptions not so claimed are deemed waived by the Feepayer.
- C. The City Manager or designee, after consulting with the City Attorney or designee, have sole authority to determine whether an exemption described herein is applicable. The City Manager's or designee's decision may only be appealed in Circuit Court.

§2-412. CREDITS.

Capital improvements for educational facilities may generate school impact fee credits in amounts to be established pursuant to subsection (A)(2) of this Section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the city.

- A. Conditions of credit approval. Credit for educational facility construction or land dedication is subject to the following:
 1. A request submitted for educational facility capital improvements by the Feepayer must include cost estimates prepared by qualified professionals to be used by the City Manager or designee in determining the amount of the credit the City Manager or designee will recommend be authorized by the City Council.
 2. Credits for contributions, payments or construction made prior to the effective date of this Section will be acknowledged by the county. The person or entity that provided the contribution, payment or construction must file an application for credit within one year of the effective date of this Section. No credit will be issued on applications filed thereafter. The application for credit must be submitted and will be reviewed as provided in this Section. The amount of the credit for a contribution, payment or construction

made prior to the effective date of this Section will be the current value of the contribution, payment or construction, less the total amount of school impact fees that would have been owed for the building permits already issued for the project had those permits been subject to the fees specified in Section 2-404 of this Code. The current value will be determined using the Engineering News-Record Construction Cost Index, or an equivalent index if such index is continued. Credits for payments or contributions prior to the effective date of this Section will not exceed that value of the impact fee required under this Division.

3. Land Dedication. Any person seeking credits for dedication of land must meet with the City Attorney or designee, the School Board Attorney and County Lands staff to seek agreement on appraisal methodology and assumptions before preparing any appraisal for valuation of land to be dedicated. The following documents must be submitted to support an application for school impact fee credits applicable to land dedication for approved school sites:
 - a. a survey of the land to be dedicated, certified by a professional land surveyor or a registered land surveyor, each of whom are licensed in the state;
 - b. a specimen of the deed that will be used to convey title to the Lee County School District;
 - c. an ALTA Form B title insurance policy in an amount equal to the approved value of the credits to be issued. The company issuing the policy must be satisfactory to the City Attorney or designee. The title insurance policy must verify that the proffered deed will convey unencumbered fee simple title to the Lee County School District;
 - d. property appraisals prepared by qualified professionals;
 - e. a document from the tax collector stating the current status of the property taxes; and
 - f. a resolution of the Lee County School Board stating that the proposed land dedication is acceptable to the school district for use as a future public educational facility.
 - g. In preparing their reports, appraisers will value the land to be dedicated as follows: If the property is subject to a valid agreement, zoning approval or development order prescribing a different valuation, then that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning approval and the zoning condition does not prescribe otherwise, then the property value will be based upon the value of the property as it existed prior to the approval containing the condition of dedication. If the land to be dedicated is not pursuant to a valid agreement, zoning approval or development order prescribing the valuation of property, the property will be valued at the time the School Board agrees to accept the conveyance.
 4. In all events, the city retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates or property appraisals for the proposed land dedication. In every case, school impact fee credits must be calculated so as to be consistent with Florida Statutes §380.06(16).
- B. Timing of Credit Issuance.
1. Credits for construction will be created when the construction is completed and accepted by the Lee County School District or when the Feepayer posts a surety, as provided in this subsection, for the costs of construction. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow

agreement must be posted with the School Board and made payable to the School Board in an amount equal to 110 percent of the full cost of such construction. If the educational facility construction project will not be constructed within one year of the acceptance of the offer by the School Board, the amount of the security will be increased by ten percent, compounded for each year of the life of the surety.

2. Credits for land dedication will be created when the title to the land has been accepted by the School Board of Lee County and recorded in the official records of the Clerk of Circuit Court in the county. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the County's Official Records Book.
- C. Transferability. School impact fee credits are transferable.
1. Credits may be used to pay or offset school impact fees anywhere in the City. However, the City Manager or designee and the City Attorney or designee must first determine that the improvement for which the credits were issued is a direct benefit to the development where the credits are sought to be used.
 2. Transferable credits must be used within ten years of the date created.
 3. If school impact fees are increased before credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the Consumer Price Index--All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. If school impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within ten years will be canceled by the Building Official. Any person who accepts credits in exchange for the

dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this Division.

- D. Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication prior to the transfer of legal title to the land or improvements in question, and pay the full school impact fees required by this Division.
- E. Credits must be claimed by the Feepayer at the time of the application for a residential building permit, mobile home move-on permit or mobile home park development order. Credits not so claimed will be deemed waived by the Feepayer.
- F. Once used, credits must be canceled and may not be reestablished even if the permit for which they were used expires without construction.

§2-413. APPEALS.

Unless otherwise provided herein, decisions made by the City Manager or designee, or by the building official, in the course of administering this Division may be appealed in accordance with those procedures set forth in Chapter 4 (Zoning) of this Code for appeals of administrative decisions. The City and the School Board are bound by the results of the administrative appeal. If the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the city, at its expense, unless the municipality elects to provide the defense of the case.

§2-414. ENFORCEMENT OF DIVISION; PENALTY; FURNISHING FALSE INFORMATION.

A violation of this Division is punishable according to Section 1-5 of this Code; however, in addition to or in lieu of any criminal prosecution, the city, or any Feepayer, has the power to sue for relief in civil court to enforce the provisions of this Division. Knowingly furnishing false information to the City Manager or designee, the building official or any other official who is charged with the administration of this Division

on any matter relating to the administration of this Division constitute a violation thereof.

§2-415--2-419. RESERVED.

ARTICLE VII. SPECIAL MASTER

§2-420 SPECIAL MASTER PROCEEDINGS UNDER THE FLORIDA LAND USE ENVIRONMENTAL DISPUTE RESOLUTION ACT.

- A. *Special master proceedings.* Special master proceedings may be requested and will be conducted in accordance with the City of Bonita Springs Administrative Code designated for that purpose.
- B. *Implementation of special master recommendation.* If the City Council elects to adopt the recommendation of the special master, the owner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.
- C. *Modification of special master recommendation.* The City Council may elect to modify the special masters recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the City's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the council's will.
- D. In order to implement the recommendation of the special master, or a modification of that recommendation, the council has the authority to waive any or all procedural requirements contained in City ordinances or Administrative Codes and to directly exercise all authority otherwise delegated to the hearing examiner, the City Manager or designees, or any other division or agency of The City of Bonita Springs.

§2-421--2-429. RESERVED.

ARTICLE VIII. PRIVATE PROPERTY RIGHTS PROTECTION ACT

§2-430. PROCEEDINGS UNDER THE BERT J. HARRIS, JR. PRIVATE PROPERTY RIGHTS PROTECTION ACT.

- A. *Offers of settlement.* Within 180 days of the filing of a notice of intent to file a claim, the City may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail:
 - 1. An increase or modification to density, intensity or use of the owner's property, so long as the density, intensity and use remain consistent with the City of Bonita Springs Comprehensive Plan;
 - 2. The transfer of development rights;
 - 3. Land swaps or exchanges;
 - 4. Compensation and purchase of the property or property interest; or
 - 5. Issuance of a development permit or order.
- B. The parties to a dispute arising under the Bert J. Harris, Jr. Private Property Rights Protection Act may craft settlements that exceed the City's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.
- C. In order to implement a settlement offer, the Council has the authority to waive any or all procedural requirements contained in City ordinances or Administrative Codes and to directly exercise all authority otherwise delegated to the hearing examiner, the City Manager or designees, or other division or agency of the City of Bonita Springs government.

§2-431--2-439. RESERVED.

**ARTICLE IX. DEVELOPMENT ORDER
APPROVAL PROCESS FOR CAPITAL
IMPROVEMENTS PROJECTS**

§2-440. APPLICABILITY.

This Article applies only to Council approved Capital Improvement Projects (CIP) falling under the jurisdiction of the City of Bonita Springs and located in the incorporated areas of the City of Bonita Springs.

§2-441. PURPOSE AND INTENT.

A. The purpose of this Article is to provide an alternative development order approval process for permitting City approved CIP projects.

It is the Council's intent to establish a procedure that will:

1. Provide greater flexibility in the timing and manner of information submittals.
 2. Ensure compliance with the requirements of this Code.
 3. Maintain consistency in the application of City regulations.
 4. Give the City Manager or designee sole authority and responsibility for issuing development order approval to City CIP's.
 5. Establish an inspection review system that will ensure City CIP's fully comply with all City regulations.
 6. Substitute the City Manager or designee as the reviewing authority for City CIP's falling under the purview of Chapter 3 (Design Standards) of this Code.
- B. Notwithstanding any other provision of this Article, it is the Council's purpose and intent to grant the City Manager or designee the same level of authority with respect to City CIP's as the City Manager or designee exercises with respect to development submittals for all other projects. In both instances the City Manager or designee are charged with the responsibility to ensure

compliance with Chapter 3 (Design Standards) of this Code.

§2-442. FEE WAIVER.

The development order application fees customarily charged in accordance with the City of Bonita Springs Administrative Code are waived for City approved CIP's constructed on City owned land or within public rights-of-way. The City remains responsible for impact fees that may be applicable in accordance with this Code.

§2-443. PROCEDURES.

The City Manager or designee are responsible for establishing procedures and policies within the department of public works:

- A. To adopt CIP development order forms, covering submittal through development order issuance, that are substantially similar to those used by the development services division; and,
- B. To ensure that all documents necessary for project design and Chapter 3 (Design Standards) of this Code compliance are prepared and submitted prior to development order issuance. This includes documents necessary to substantiate an appropriate grant of an administrative variance or pursuit of a deviation or variance requiring hearing examiner approval; and
- C. To address all issues, in accordance with applicable regulations, relating to the project and pertaining to traffic impacts, environmental impacts, zoning, fire safety, surface water management, utility connection and building code compliance in order to obtain the necessary permits from the appropriate authorizing entity; and
- D. To conduct appropriate inspections to ensure compliance with the development order, as issued, and other applicable permits; and
- E. To amend approved CIP development orders in a manner that is substantially similar to the procedure set forth in Sections 3-118 and 3-120 of this Code.

§2-444. CIP DEVELOPMENT ORDER APPROVAL.

- A. The City Manager or designee have sole authority to grant development order approval for City approved CIP projects submitted in accordance with this Article.
- B. The City Manager or designee will issue a CIP Development Order approval after he reviews all submittals and determines the project complies with all applicable codes and regulations.
- C. Upon CIP development order approval, the City Manager or designee will issue a development order approval letter and stamp the approved development order drawings with an appropriate development order stamp.
- D. Copies of the development order approval letter, stamped drawings and backup submittals must then be sent to the City Manager or designee of development services for safekeeping.
- E. The City Manager or designee will record the notice of development order required in accordance with Section 3-114 of this Code.
- F. The duration of the CIP development order is controlled by the provisions set forth in Sections 3-115 and 3-123 of this Code.
- G. Building permits may not be issued until after the CIP development order is issued by the City Manager or designee.

§2-445. CERTIFICATE OF CONCURRENCY.

City CIP projects must meet the concurrency standards set forth in Chapter 2, (Administration) Article II of this Code. The City Manager or designee will review the project for compliance with concurrency standards and issue a certificate of concurrency to CIP projects meeting City standards.

§2-446. ADMINISTRATIVE DEVIATIONS.

The City Manager or designee have sole authority and responsibility to grant or deny administrative deviations for City approved CIP projects. Approval must be in accordance with the criteria set forth in Section 3-104 of this Code. Documents supporting approval must be filed and

archived in accordance with Section 2-448 of this Code.

§2-447. CIP CERTIFICATE OF COMPLIANCE.

The City Manager or designee, will perform a final inspection. If the inspection reveals the development is in substantial compliance with the approved development order, the City Manager or designee will issue a certificate of compliance. If the inspection reveals the development is not in substantial compliance with the approved development order, the City Manager or designee will require appropriate approvals, corrections, or amendments before issuing the certificate of compliance.

§2-448. FILING AND ARCHIVING.

A copy (or originals, when available) of all documents substantiating the issuance of a development order must be retained in accordance with State and Federal guidelines. The City Clerk's office is the entity responsible for archiving these documents in The City of Bonita Springs.

Once a CIP development order is approved, a copy (or originals, if available) of all documents substantiating the development order issuance, including all documents submitted for review, must be forwarded to the City Clerk's office for filing and archiving. Any subsequent documents prepared or submitted relating to the CIP must also be sent to the City Clerk's office for filing.

The division of public works may keep a duplicate file on the project. However, the official City of Bonita Springs file will be the one retained by the City Clerk's office.

§2-449. COMPLIANCE WITH THIS CODE.

All projects approved under this Article must comply with the requirements set forth in this Code, except as otherwise specifically provided by this Article.

§2-450--2-460. RESERVED.

**ARTICLE X.HURRICANE
PREPAREDNESS**

§2-461. PURPOSE AND INTENT.

The purpose of this Article is to address the impacts created by residential development on hurricane shelter availability and evacuation capability in the City of Bonita Springs. These regulations are intended to mitigate the growing hurricane shelter deficit, along with related effects on evacuation times and infrastructure, caused by permitting residential development without addressing the incremental impact on the City's hurricane preparedness program.

§2-462. APPLICABILITY.

This Article applies only to development required to obtain a development order under Chapter 3 (Design Standards) of this Code and is applicable to all new residential development within the City of Bonita Springs that is located in a landfalling category 1, 2, or 3 storm surge area. This Article also applies to new and existing developments of regional impact. The provisions of this Article supersede Lee County Administrative Code 7-9 in the event of a conflict. Under this Article, residential development includes, but is not limited to, all assisted living facilities, dwelling units, living and housing units, mobile homes, recreational vehicle developments (including recreational vehicles qualifying as permanent residences under this Code), hotel and motel, health care facilities Groups I, II, IV, and social services facilities Groups II and IV, as these terms are defined in **Chapter 4** (Zoning) of this Code. This Article does not eliminate the shelter requirements applicable to mobile home or recreational vehicle developments contained in Section 3-258 of this Code to the extent this obligation is fulfilled by compliance with this Article.

§2-463. RESERVED.

§2-464. DETERMINING IMPACTS.

A. *Authority.* The City Manager or designee have the authority and responsibility to determine the hurricane shelter and evacuation impacts.

In the event of a dispute with respect to the level or amount of impact, the City Manger's or designee's decision will control. The formulas for calculating the impacts are identified below.

B. *Shelter impacts.* Shelter impacts are largely related to building issues (i.e., availability of actual appropriate shelter space). Impact on the hurricane shelter availability is calculated as follows:

Residential Units:

The following formula must be used for all dwelling units, living and housing units, mobile homes, recreational vehicle developments, health care facilities – Groups I, II and IV, and social services-Groups III and IV.

In Health care facilities Groups I, II and IV, social services – Groups III and IV, and other similar group residences, each four beds will be counted as one residential unit.

$$U \times P = N$$
$$N \times SSr = Sp(r)$$

Hotel/Motel Units:

The following formula must be used for all hotels and motels.

$$Hu \times 0 = R$$
$$R \times Ssr = Sp(hu)$$

Total Units:

$$Sp(r) + Sp(hu) = Sp(\text{total spaces})$$
$$Sp \times Rfa = Sq(t)$$

- Notes:
- O = Number of people per unit
 - R = Residents in residence
 - N = Number of residents in development
 - U = Number of residential units
 - Hu = Number of hotel/motel units
 - P = Persons per household*
 - Rfa = Required square feet of shelter floor area per space (currently 20 square feet per space)
 - Sp(r) = Shelter spaces needed by

development's residential units.

Sp(hu)= Shelter spaces needed by development's hotel/motel units

Ssr = Shelter seeking rate (currently 0.21 is used)

Sq(t) = Total square feet of shelter floor area required for the Development

* For Developments of Regional Impact, use the value set forth below that represents the closest year to the established buildout date:

- Year 2000 – 2.25
- Year 2005 – 2.21
- Year 2010 – 2.17
- Year 2015 – 2.13
- Year 2020 – 2.09

The City Manager or designee has the discretion to permit the use of an alternative person per household (P) figure for non-development of regional impact projects. Any alternative figure used must be supported by valid evidence, acceptable to the City Manager or designee and derived from an established source. The applicant requesting the alternative figure is responsible for providing sufficient evidence to substantiate the alternative figure.

C. *Evacuation impacts.* Evacuation impacts are largely related to the transportation infrastructure necessary to accommodate timely and efficient evacuation. Impacts on the evacuation time and infrastructure are calculated as follows:

Step One: Calculate the number of evacuating vehicles for all residential units:

$$EV(r) = U \times V$$

EV(r) = the number of evacuating vehicles for

all residential units (i.e., single-family residential, multi-family, hotels/motels, etc.)

U = the number of residential units

V = number of vehicles per occupied unit.

The current figure used is 1.1

Step Two: Calculate the total number of evacuating vehicles for all residential units in the development.

? EV(r)

§2-465. IMPACT MITIGATION.

A. *Authority.* The City Manager or designee will make the final decision with respect to the acceptability of the type and degree of mitigation offered to address the proposed development. This determination will be based upon consideration of the type and intensity of development, its location and the incremental effect on the hurricane preparedness program created by the development.

The mitigation requested by the City must have a reasonable relationship to the incremental impact of the development. Appropriate calculation of the impacts in accordance with Section 2-464 of this Code will constitute sufficient evidence of the reasonable relationship.

The City Manager or designee has the authority to deny acceptance of a proposed type of mitigation if the proposal is determined to be inappropriate for the location involved (e.g., vertical evacuation in a coastal high hazard area) or constitutes the creation of an unacceptable shelter facility (e.g., on-site shelter without all appropriate shutters).

The option chosen by the developer to mitigate shelter and evacuation impacts must be fully implemented prior to the issuance of a certificate of occupancy for any residential dwelling unit that precipitates the requirement to mitigate under this Article. However, this provision is not intended to prevent mitigation prior to the time a certificate of occupancy may be issued.

B. *Shelter Impacts.* One or a combination of the following options may be used to address the impacts on the hurricane shelter program precipitated by the proposed residential development. Acceptability and

appropriateness of the type of mitigation proposed will be determined by the division.

1. *Land donation.* A donation of land must meet the following minimum criteria:

- a. The structure must be located outside the coastal high hazard area.
- b. The land is capable of being used to reduce hurricane shelter impacts in the City of Bonita Springs.
- c. The City will receive marketable fee title to the property. (Property encumbered by a restriction that it be used solely for hurricane shelter purposes will be deemed unacceptable.)
- d. The value of the land donated will be determined as of the earliest date the requirement to provide hurricane preparedness mitigation becomes applicable based upon formal City action (i.e., rezoning, platting, etc.).

2. *Donate use of private structure.* A donation of the use of a private structure must meet the following minimum criteria:

- a. The structure must be located outside the coastal high hazard area.
- b. The structure must be construed and capable of use as a primary public hurricane shelter. Specifically, the structure must be elevated to the anticipated category three flood level; constructed to withstand winds of at least 110 miles per hour; equipped with emergency power and potable water supplies; constructed with a minimum of exterior glass, while providing adequate protection by shutters or boards for any glass used; and, have adequate ventilation, sanitary facilities and first-aid equipment.
- c. For purposes of compliance with this Article, the cost of providing or donating a structure for use as a primary hurricane shelter will be determined as the incremental cost difference attributable to bringing the

structure up to primary public shelter standards from the original primary proposed use.

3. *Payment in lieu of donation of land or use of a private structure.* The amount of a payment in lieu will be calculated using the following method or formula:

Step One: Calculate Costs for Shelter Improvements.

Multiply the total required square feet of shelter floor area from Section 2-464(B) of this Code by \$6.66 to determine costs for increased wind speed standards and elevation.

Note:

\$1.34 per square foot of shelter space for increased essential facility wind speed standards;

\$5.32 increase for elevation of a square foot of shelter space above storm surge for a Category 3 hurricane; equals \$6.66 per square foot of shelter space

Step Two: Emergency Power Costs

LPC X SF X PD X \$200.00 divided by 1000

5x20x1 (representing one person) x \$200.00 divided by 1000 = \$20.00 per person

Note:

LDC = number of watts per square foot for load and power consumption of typical uses

SF = 20 sq. feet, the minimum hurricane shelter space area per person, see 9-J-2.0256(1)(F), FAC

PD = number of people in dwelling unit; 1 is used to calculate a per person cost

Step Three: Total Costs from Step one for sheltering and Step two for emergency power (not including shuttering).

(\$6.66 X= \$ for increased wind speed Sq) standards and elevation Plus \$20.00 per person;

Note:

Sq. = Total Square Feet from Section 2-464(B) of this Code, i.e., the value derived for Sq(t).

4. *On-site shelter.* Provision of an on-site shelter must meet the following minimum criteria:

- a. The on-site shelter must be located outside the coastal high hazard area.
- b. The shelter space to be provided must, at minimum, equal the hurricane shelter space demand the proposed development is anticipated to create.
- c. The structure must be elevated to the anticipated landfalling category three flood level; constructed to withstand winds of at least 110 miles per hour for an essential facility; equipped with emergency power and potable water supplies; constructed either with exterior glass meeting STTD 12-97 standard (or equivalent) or with a minimum of exterior glass while providing adequate protection by shutters; and have adequate ventilation, sanitary facilities and first-aid equipment.
- d. For purposes of compliance with this Article, the cost of providing a structure for use as an on-site hurricane shelter will be determined as the incremental cost difference attributable to bringing the structure up to public shelter standards from the original or primary use.

5. *Public training of public hurricane shelter managers.* Provision for training of public hurricane shelter managers must meet the following minimum criteria:

- a. The training must be provided by the American Red Cross or Lee County Emergency Management.
- b. The City Manager or designee have, in his sole discretion, determined that this is a viable method of mitigating

the shelter impacts created by the proposed development.

c. *Evacuation impacts.* One or a combination of the following options may be used to address the impacts on hurricane evacuation routes with respect to evacuation timing and infrastructure precipitated by the proposed residential development. Acceptability and appropriateness of the type of mitigation proposed will be determined by the division and the Public Works Department

6. *Roadway elevation or improvements.* Acceptability and appropriateness of this option will be determined by the DOT based upon the residential development vulnerability conditions. Mitigation under this option may include one or more of the following:

- a. Construction of roads in the development or subdivision will be built to meet the same elevation of the nearest segment of a designated evacuation route. Determination as to the applicable route or segment will be made by the division in consultation with the City of Bonita Springs.
- b. Construction of the main access or spine road in the development or subdivision to an elevation meeting the one in ten to the one in 25-year storm event. The City of Bonita Springs DOT will determine the applicable storm event standard.
- c. Improvement of an offsite road that will be used by the subdivision or development for evacuation purposes. The road segment and standard for the road improvement will be determined by the City of Bonita Springs.

7. *Evacuation efficiency improvements.* Provision of funds to improve the ability to provide information to evacuees during actual evacuation situations or to improve the existing warning and notification

system. Funds provided under this option may be used for items such as:

- a. Communications equipment to convey real time conditions to the public on the roadways.
- b. Information systems along major arterial evacuation routes to convey emergency information.

Decisions with respect to the expenditure of funds provided under this option will be made by the City Manager or designee. All equipment purchases must be based upon an identified need for the additional equipment and must serve to upgrade the existing warning and notification system.

8. *Vertical evacuation.* The viability of this mitigation option will be based upon the following criteria:

- a. The structure must be elevated above the anticipated category three landfalling hurricane storm surge and must be able to withstand wind speeds of at least 110 miles per hour for an essential facility.
- b. The structure must be located outside the coastal high hazard area.

9. *Mitigation options that will address both shelter and evacuation impacts:* One or a combination of the following options will constitute full mitigation of both shelter and hurricane evacuation impacts for the residential development:

- a. *Safe room.* This option provides for construction of a room, within a residential building, that is designed to withstand a hurricane and is capable of accommodating the occupants of the dwelling. Viability of this mitigation option will be determined by the division based upon the following criteria.
 - i. The room selected for this purpose is built to the current standard set forth by the Federal Emergency Management Agency for a safe room.
 - ii. The residential unit where the safe room is constructed is

located outside the coastal high hazard area.

- b. *Elevation above hurricane flooding levels.* This option requires construction of residential units above the category three landfalling storm surge level. This option is available only for construction located outside the coastal high hazard and does not subject the construction to standards in excess of those applicable in the county building codes.

- i. All funds collected in accordance with this Article are required to be spent to mitigate the impacts of the development from which they are collected.

§2-466. APPEAL.

Decisions made by the City Manager or designee may be appealed directly to City Council as an appeals agenda item during a regularly scheduled council meeting. The agenda item must comply with the City of Bonita Springs Administrative Code relating to appeals.