

**CITY OF BONITA SPRINGS
ORDINANCE NO. 18 – 10**

AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 2, ARTICLE VI, DIVISION 2, ROADS IMPACT FEE; AMENDING §2-191, RULES OF CONSTRUCTION AND DEFINITIONS; §2-193, COMPUTATION OF AMOUNT; §2-198, REFUND OF FEES PAID; §2-201, EXEMPTIONS; AND, §2-202, CREDITS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes §166.01 authorizes cities to adopt ordinances for the exercise of its powers; and,

WHEREAS, the Bonita Springs City Council adopted its Land Development Code (LDC) which contains regulations applicable to the development of land in Bonita Springs; and,

WHEREAS, the Florida Legislature adopted the Florida Impact Fee Act finding that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth and further finding that impact fees are an outgrowth of the home rule power of local governments to provide certain services within its jurisdiction (Florida Statutes §163.31801 *et seq.*); and

WHEREAS, the City Council has the authority to adopt impact fees pursuant to Article VIII of the Constitution of the State, Florida Statutes, Chapter 166 and Sections 163.3201, 163.3202, and 380.06(16); and,

WHEREAS, LDC, Chapter 2, Article VI, establishes Bonita Springs impact fee base rate schedules and regulations applicable to new development for Roads, Parks, Fire and Emergency Medical Services, and Schools; and,

WHEREAS, Florida Statutes §163.31801 (a) requires that the calculation of impact fees be based on the most recent and localized data; and,

WHEREAS, the Bonita Springs City Manager approved a contract with Duncan and Associates, Inc., to review and update the City's impact fee schedules for roads and parks; and,

WHEREAS, the study prepared by Duncan and Associates, Inc., forms the basis of the proposed amendments herein for roads and are hereby adopted by the City Council; and,

WHEREAS, the Duncan and Associates, Inc., study and revised fee schedule relies upon the best available technical data at the time the study was prepared and the use of sophisticated methodology to determine the impacts of development in an effort to establish an appropriate level of impact fees based on most recent localized data.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: AMENDMENTS TO BONITA SPRINGS LAND DEVELOPMENT CODE

The City of Bonita Springs Land Development Code Chapter 2, Article VI, Division 2, Sections §2-191, rules of construction and definitions; §2-193, computation of amount; §2-198, refund of fees paid; §2-201, exemptions; and §2-202, credits, are hereby amended and replaced with new language underlined and deleted language cross-hatched, as follows:

DIVISION 2. - ROADS IMPACT FEE

Sec. 2-191. - Rules of construction and definitions.

(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 comprehensive plan, and in chapters 3 and 4, unless otherwise indicated.

(b) The following words, terms and phrases, when used in this division, will have the meanings ascribed to them in this subsection and the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation, except where the context clearly indicates a different meaning:

Access road means an access street, frontage street or reverse frontage street as defined in chapter 3.

Approved road means an arterial road, collector road, freeway or expressway, including sidewalks bordering such roads and access roads, that if constructed in whole or in part by a nongovernmental entity, or the right-of-way of which is dedicated to the city or some other government approved by the city, that may entitle the person constructing the road or dedicating the right-of-way to a roads impact fee credit equal to all or a portion of the value of the land dedicated or the cost of construction. Approved roads are divided into Class 1 roads, Class 2 roads and Class 3 roads, which are defined in this section. Approved roads do not include site-related improvements.

Building official means that officer who is so defined in chapter 4.

Building permit means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term

"building permit" specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance.

Building with mixed uses means a building containing more than one principal use, as that term is defined in chapter 4.

Capital improvements means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any non-site-related road construction project or other alternative transportation system which enhance the capacity of the existing transportation network to accommodate new growth, including, but not limited to:

- (1) Constructing new through lanes;
- (2) Constructing new turn lanes;
- (3) Constructing new frontage or access roads;
- (4) Constructing new bridges;
- (5) Constructing new drainage facilities in conjunction with roadway construction;
- (6) Purchasing and installing traffic signalization (including both new installations and upgrading signalization);
- (7) Constructing curbs, medians, sidewalks, bicycle paths and shoulders in conjunction with roadway construction;
- (8) Relocating utilities to accommodate new roadway construction; and
- (9) Constructing on-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular capacity of the existing network of approved roads.
- (10) Alternative roadway capacity improvements that accommodate vehicle trips by providing alternative travel modes and by taking pedestrians, bicyclists, and buses out of travel lanes including, but not limited to, sidewalks and other pedestrian improvements, bikeways, and bus pull-out lanes along arterial and collector roads.
- (11) Any transportation system, including transportation vehicles or equipment that have an useful life of at least three years, provided that city council makes the factual determination that such expenditure is appropriate, giving due consideration of the specific and prevailing local conditions and needs, and that the purchase of any item will enhance the capacity of the existing transportation network to accommodate new growth.

City Manager means the City Manager, or the City officials that the City Manager may designate to administer the various provisions of this division.

Class 1 road means an approved road shown in the transportation element of the Bonita Plan that is included as a city-funded road construction or improvement project on the five-year schedule of improvements within the Bonita Plan's capital improvements element adopted and amended from time to time. Class 1 roads include access roads shown on the access road location map if the city requires their construction as a condition

of development order approval or a specific written condition of the zoning approval. Notwithstanding their inclusion on the access road location map, Class 1 roads do not include site-related improvements such as access roads constructed to achieve site location standards for commercial development or to provide for internal circulation when such roads would not otherwise be required by the city pursuant to criteria in chapter 3.

Class 2 road means an approved road shown in the Bonita Plan transportation element that is scheduled for construction as a city-funded project in any ten-year capital improvement, but which is not included on the five-year schedule of improvements within the capital improvements element of the Bonita Plan.

Class 3 road means an approved road shown in the Bonita Plan transportation element that is not included for construction or improvement within the capital improvements element of the Lee Plan or any five- or ten-year capital improvement plan of the city. Class 3 roads include all arterial and collector roads that provide a reasonable alternative route for traffic that otherwise would travel a specific road shown on the Bonita Plan map.

Continuing care retirement community (CCRC) means a land use that provides multiple elements of senior adult living. CCRCs combine aspects of independent living with increased care, as lifestyle needs change with time. Housing options may include various combinations of senior adult (detached), senior adult (attached), congregate care, assisted living, and skilled nursing care—aimed at allowing the residents to live in one community as their medical needs change. The communities may also contain special services such as medical, dining, recreational, and some limited, supporting retail facilities. CCRCs are usually self-contained villages. The definition excludes attached and detached senior housing which is separate and apart from the communities.

Convenience Store w/Gas Sales (<10 fuel positions) means an establishment offering the sale of motor fuels and convenience items to motorists and has fewer than ten vehicle fueling positions.

Super Convenience Store w/Gas Sales (10+ fuel positions) means an establishment offering the sale of motor fuels and convenience items to motorists and has ten or more vehicle fueling positions.

Duplex has the same meaning given it in chapter 4.

Elderly/disabled housing means dwelling units qualified to receive federal assistance through programs set forth in Section 202 (supportive housing for the elderly, authorized under the Housing Act of 1959, Section 210 of the Housing and Community Development Act of 1974, and the National Affordable Housing Act) or Section 811 (supportive housing for persons with disabilities, authorized under the National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, the Rescission Act and the American Homeownership and Opportunity Act of 2000).

Expansion of the capacity of a road means all road and intersection capacity enhancements, and includes, but is not limited to, extensions, widening, intersection improvements and upgrading signalization.

Fast food restaurant has the same meaning given it in chapter 4.

Feepayer means a person commencing a land development activity that will generate or attract traffic, and who is applying to the city ~~or a participating municipality~~ for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for a type of land development activity specified in section 2-193(a), regardless of whether the person owns the land to be developed.

General office means any type of office, except a medical office. A general office building may contain accessory uses such as a beauty or barbershop, snack bar, cafeteria, day care or other use that primarily serves tenants of the office building and their employees; provided that such accessory uses do not account for more than ten percent of the gross floor area of the building.

Hotel/motel has the same meaning given it in chapter 4.

Industrial means the use of a building or structure primarily for the storage, packaging or distribution of goods; the assembly, fabrication or manufacture of goods, either from raw materials or other goods; and the basic processing of foodstuffs.

Land development activity means any change in land use, or any construction of buildings or structures, or any change in the use of any building or structure that attracts or produces vehicular trips.

Level of service means a qualitative measure that represents the collective factors of speed, travel time, traffic interruption, freedom to maneuver, driving comfort and convenience provided by a highway facility under a particular volume condition. Levels of service vary from A to F. (Level of service D, for example, represents high-density, but stable, flow. Speed and freedom to maneuver are severely restricted, and the driver or pedestrian experiences a generally poor level of comfort and convenience. Small increases in traffic flow or disruptions will generally cause substantial increases in delay and decreases in travel speed, the influence of congestion becomes more noticeable, longer delays result at traffic signals and stop signs, and crossing movements face a high probability of conflict.)

Living unit has the same meaning given it in chapter 4.

Medical office has the same meaning given it in chapter 4.

Mine or Quarry means a site for the extraction of solid minerals from the ground, including, but not limited to, phosphate rock, limerock, coral stone, limestone, sand, gravel and shell for use off the premises from which extracted.

Mobile home has the same meaning given it in chapter 4. Mobile homes not located within an established mobile home park will be treated as a single-family residence for impact fee calculation purposes.

Mobile home move-on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. The term "mobile home move-on permit" also includes a permit authorizing the tie down of a park trailer in a mobile home zoning district.

Multiple-family building has the same meaning given it in chapter 4.

Park trailer has the same meaning given it in chapter 4.

Permit, interior completion, means any permit issued by the building official that will permit completion of a shell building, or unit within a shell building, by authorizing work to finish interior units, so that the building may receive a certificate of occupancy.

Public/Institutional means a governmental, quasi-public or institutional use, or a non-profit recreational use, not located in a shopping center or separately listed in the impact fee schedule. Typical uses include higher educational establishments, fire stations, city halls, courthouses, post offices, jails, libraries, museums, military bases, airports, bus stations, fraternal lodges, parks and playgrounds. It includes the following uses as defined in chapter 4: bus terminal, fraternal club, adult day care center, dormitory, and prison.

Recreational vehicle has the same meaning given it in chapter 4.

Recreational vehicle park development order means a final development order, as that term is used in chapter 3, permitting the placement of recreational vehicles on any area of land.

Restaurant, standard means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state, and principal method of operation includes one or both of the following characteristics:

- (1) Customers are served their foods and beverages by a restaurant employee at the same table or counter where food and beverages are consumed, and
- (2) A cafeteria-type operation is conducted where food and beverages generally are consumed within the restaurant building.

Restaurant, Drive-Through a stand-alone establishment, not located in a shopping center but may be located on an out-parcel, that sells meals prepared on site for eating in or out of the site, and typically provides drive-through or drive-in service.

Retail / Commercial means an integrated group of commercial establishments planned, developed, owned or managed as a unit, or a free-standing retail or commercial use not otherwise listed in the impact fee schedule. Uses located on a shopping center outparcel are considered free-standing for the purposes of this definition. A retail or commercial use shall mean the use of a building or structure primarily for the sale to the public of nonprofessional services, or goods or foods that have not been made, assembled or otherwise changed in ways generally associated with manufacturing or basic food processing in the same building or structure.

~~*Retail* means the use of a building or structure primarily for the retail or wholesale sale of goods or foods that have not been made, assembled or otherwise changed in ways generally associated with manufacturing or basic food processing in the same building or structure.~~

Road has the same meaning given it in F.S. §334.03 (22).

Senior adult housing consists of detached or attached independent living developments, including retirement communities, age-restricted housing, and active adult communities. These developments may include amenities such as golf courses, swimming pools, 24-hour security, transportation, and common recreational facilities. However, they generally lack centralized dining and on-site health facilities. Detached

senior adult housing communities may or may not be gated. Residents in these communities are typically active (requiring little to no medical supervision) and will be treated as single-family detached or multi-family for purposes of the land use type.

Shell building means any commercial or industrial building, or portion of a building, so constructed to consist exclusively of exterior walls and unfinished interior units with rough staged utilities so as to preclude occupancy. The term "shell building" does not include agricultural or residential buildings.

~~*Shopping center* has the same meaning as Retail / Commercial. means an integrated group of commercial establishments planned, developed, owned or managed as a unit. A shopping center consists primarily of retail establishments, but may also contain some other uses, such as restaurants, medical or general offices. Shopping center outparcels will be treated as separate uses.~~

Single-family residence has the same meaning given it in chapter 4.

Site-related improvements means capital improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements include, but are not limited to, the following:

- (1) Site driveways, roads, and bicycle and pedestrian facilities;
- (2) Median cuts made necessary by those driveways or roads;
- (3) Right-turn, left-turn, and deceleration or acceleration lanes leading to or from those driveways or roads;
- (4) Traffic control measures for those driveways or roads;
- (5) Access or frontage roads that are not shown as planned city-built or publicly owned roads on the city's access road location map, as amended;
- (6) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to or within the development;
- (7) Unless required by the city pursuant to the criteria in section 3-285, access or frontage roads that enable a parcel to achieve site location standards for commercial development; and
- (8) Unless required by the city pursuant to the criteria in section 3-283, roads that provide frontage for newly created lots that would not normally have frontage.

Timeshare has the same meaning given it in chapter 4.

Townhouse has the same meaning given it in chapter 4.

Two-family attached has the same meaning given it in chapter 4.

Warehouse. The definitions are as follows:

- (1) *General warehouse* means an establishment primarily engaged in the display, storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment, but not including a high-cube warehouse. Typical uses include wholesale distributors, storage warehouses, moving and storage firms, trucking and shipping operations and

major mail processing centers. This category also includes but is not limited to the following uses defined in chapter 4: Recycling facility, Processing and warehousing, Storage, Trucking Terminal, Stable (Commercial), Private Warehouse, and Private Wholesale Establishment

(2) High-Cube warehouse means a large warehouse and distribution center with a high level of mechanization and low level of on-site employment, located within a building with a minimum gross floor area of 100,000 square feet, a minimum ceiling height of 24 feet, dock-high loading bays at a minimum ratio of one door per 10,000 square feet of high cube warehouse floor area, and a maximum accessory office floor area of five percent of the overall building.

(3) Mini Warehouse means an enclosed storage facility containing independent, fully enclosed bays that are leased to persons for storage of their household goods or personal property.

(Ord. No. 05-02, § 3(2-264), 1-5-2005; Ord. No. 13-21, § 1(2-264), 12-18-2013; Ord. No. 15-16, § 1, 7-15-2015)

Sec. 2-193. - Computation of amount.

(a) At the option of the feepayer, the amount of the roads impact fee may be determined by the schedule below. ~~which is on file in the city clerk's office.~~ The reference in the schedule to square feet refers to the gross square footage of each floor of a building measured to the outside of the exterior walls, and not usable, interior, rentable, noncommon or other forms of net square footage. Gross floor area excludes structured parking (vehicular parking and loading areas). 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.

ROADS IMPACT FEE SCHEDULE

<u>Land Use Type</u>	<u>Unit</u>	<u>Roads Impact Fee Due at 100% of Actual Full Cost</u>	Editor's Note: Impact Fee in effect until new impact fees go into effect
<u>Residential</u>			
<u>Single-family residence (detached)</u> ¹	<u>Dwelling unit</u>	<u>\$12,350</u>	<u>\$8,719</u>
<u>Multi-family or timeshare</u> ²	<u>Dwelling unit</u>	<u>\$9,576</u>	<u>\$6,116</u>
<u>Mobile home/RV park</u>	<u>Pad/park site</u>	<u>\$6,541</u>	<u>\$4,553</u>
<u>Adult congregate living facility (ACLF)</u>	<u>Dwelling unit</u>	<u>\$2,641</u>	<u>\$1,966</u>

<u>Continuing care retirement community</u>	<u>Dwelling unit</u>	<u>\$3,138</u>	new
<u>Hotel/motel</u>	<u>Room/unit</u>	<u>\$6,111</u>	<u>\$3,745</u> Ord. 16-17
<u>Retail Commercial</u> ⁵			
<u>Shopping center</u>	<u>1,000 sq. ft.</u>	<u>\$14,180</u>	<u>\$12,160</u>
<u>Bank</u>	<u>1,000 sq. ft.</u>	<u>\$31,601</u>	<u>\$29,843</u>
<u>Car wash, self-service</u>	<u>Stall</u>	<u>\$7,551</u>	<u>\$5,112</u>
<u>Car Wash, Semi-automated</u>	<u>Per Tunnel</u>	<u>\$28,755</u>	new
<u>Convenience store w/gas sales (<10 fuel positions)</u>	<u>Fuel positions</u>	<u>\$23,449</u>	<u>\$34,154</u>
<u>Super Convenience store w/gas sales (10+ fuel positions)</u>	<u>Fuel positions</u>	<u>\$16,759</u>	new
<u>Golf course (open to public)</u> ²	<u>Acre</u>	<u>\$2,815</u>	<u>\$2,618</u>
<u>Movie theater Stand-alone</u>	<u>1,000 sq. ft.</u>	<u>\$33,335</u>	<u>\$22,556</u>
<u>Restaurant, standard</u>	<u>1,000 sq. ft.</u>	<u>\$27,204</u>	<u>\$23,393</u>
<u>Restaurant, drive-through</u>	<u>1,000 sq. ft.</u>	<u>\$60,423</u>	<u>\$34,352</u>
<u>Office/Institutional</u>			
<u>Office, General</u>	<u>1,000 sq. ft.</u>	<u>\$9,406</u>	<u>\$7097</u>
<u>Medical Office</u>	<u>1,000 sq. ft.</u>	<u>\$9,783</u>	<u>\$24,438</u>
<u>Hospital</u>	<u>1,000 sq. ft.</u>	<u>\$9,783</u>	<u>\$11,400</u>
<u>Nursing Home</u>	<u>1,000 sq. ft.</u>	<u>\$6,061</u>	<u>\$3,957</u>
<u>Place of Worship</u>	<u>1,000 sq. ft.</u>	<u>\$5,821</u>	<u>\$4,444</u>
<u>Day Care Center</u>	<u>1,000 sq. ft.</u>	<u>\$12,784</u>	<u>\$16,630</u>

<u>Elementary/Secondary School (Private)</u>	<u>1,000 sq. ft.</u>	<u>\$4,811</u>	<u>\$2,878</u>
<u>Public / Institutional</u>	<u>1,000 sq. ft.</u>	<u>\$5,432</u>	<u>new</u>
<u>Industrial</u>		<u>\$5,432</u>	<u>new</u>
<u>Industrial park or general industrial</u>	<u>1,000 sq. ft.</u>	<u>\$4,177</u>	<u>\$6,017</u>
<u>Warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$2,161</u>	<u>\$4,288</u>
<u>Warehouse, high-cube</u>	<u>1,000 sq. ft.</u>	<u>\$1,739</u>	<u>\$4,288</u>
<u>Mini-warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$1,341</u>	<u>\$1,543</u>
<u>Mine or Quarry ⁴</u>	<u>1,000 Cubic yard</u>	<u>\$50</u>	<u>New</u>

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. Senior adult housing, detached will be treated as a single-family residence for impact fee calculation purposes.

(2) Timeshare will be treated as multi-family. Senior adult housing, attached, will be treated as multi-family for impact fee calculation purposes.

(3) Impact fees for a golf course (i.e., tees, fairways, greens, accessory structures such as golf cart houses, etc.) are due and payable prior to the issuance of the development order for the golf course. The golf course club house and related club house facilities will not be included in the impact fee calculation for the golf course. Impact fees for the club house and related facilities will be calculated separately, at the time of building permit issuance for these facilities, based upon the uses encompassed by the club house facility.

(4) Under this article, impact fees become due and payable at the time of building permit issuance. Mine impact fees become due and payable at the time the mine operation permit is issued. Mine impact fees will not be assessed upon the renewal of an existing mine operation permit, provided the mine footprint remains the same. If the mine footprint is increased beyond the previous mine operation permit approval, impact fees will be assessed upon the incremental increase in cubic yardage at the time the mine operation permit is issued. For purposes of this Code, a building permit or mine operation 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.

[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.]

(5) If a building permit is requested for a building with mixed uses, as defined in section 2-291, 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. A shopping center will be considered a principal use; however, when located within a shopping center, a drive-through restaurant or convenience store with gasoline sales will be considered a principal use.

(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 road impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original fee payer or collected by the county or city, whichever is applicable. If road impact fees are owed, no city or county permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(2) The fee schedule set forth above will go into effect on Monday, November 5, 2018. The fee schedule in effect prior to this ordinance will remain in effect until close of business, Friday, November 2, 2018. Notwithstanding, any reductions in fee calculations shall be implemented by staff upon the effective date of this ordinance.

(3) The rate for the fee schedule set forth above is hereby discounted for the first three years of imposition by the following amount:

<u>Discount Amount</u>	<u>Commencement Date</u>	<u>Expiration Date</u>
<u>30%</u>	<u>November 5, 2018</u>	<u>November 1, 2019</u>
<u>20%</u>	<u>November 4, 2019</u>	<u>November 6, 2020</u>
<u>10%</u>	<u>November 9, 2020</u>	<u>November 5, 2021</u>

Unless amended by City Council, the full fee schedule will go into effect on Monday, November 8, 2021. The last discounted rate will remain in effect until close of business, Friday, November 5, 2021.

~~Change of size or use impact fee program for existing commercial redevelopment. Effective August 15, 2010 to August 15, 2014, unless extended for an additional period of time at the sole discretion of the city council through a~~

~~resolution, the city will not assess additional road impact fees related to changes of use within existing buildings; provided they meet the criteria set forth:~~

- ~~a. The change of use is located in a lawfully existing building which has had a certificate of occupancy for a commercial or industrial use issued prior to the commencement of this program.~~
- ~~b. Buildings which paid impact fees for noncommercial uses (e.g., residential, schools, or churches) are not eligible for non-assessment under this program.~~
- ~~c. Nothing in this program should be construed as to permit a change in use as to zoning. Any change permitted in the program must be consistent with the zoning of the property and other land development regulations. Starting August 15, 2011, prior to issuance of a certificate of occupancy, staff may ask city council to require a traffic generation report on projects located on streets where the level of service (LOS) is "D" or lower, to verify that concurrency will not be adversely affected.~~
- ~~d. Impact fees for the existing building must have been paid the then applicable impact fees at the time of construction.~~
- ~~e. The proposed change of use is solely within the existing building and does not include the addition of any new square footage.~~
- ~~f. Demolition and reconstruction projects are not eligible for this program.~~
- ~~g. Following the expiration of the change of size or use impact fee program ("program"), any use permitted under the program will be entitled to utilize the program without assessment of additional road impact fees for the period while the property is being used for the same use entitled during this program.~~

~~**Editor's note**—Redevelopment Program was extended to August 15, 2014, by Resolution 12-25.~~

- (c) If a feepayer opts not to have the impact fee determined according to subsection (a) of this section, then the feepayer must prepare and submit to the city manager or designee an independent fee calculation study for the land development activity for which a building permit, mobile home move-on permit or recreational vehicle development order is sought. The independent fee calculation study must measure the impact of the development in question on the road system illustrated on Figure 1 of the transportation element of the comprehensive plan by following the prescribed methodologies and formats for the study established by the city administrative code. The feepayer must attend a preapplication 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 preapplication 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:

$$\text{IMPACT FEE} = \text{VMT} \times \text{NET COST/VMT}$$

Where:

$$\text{VMT} = \text{ADT} \times \% \text{ NEW} \times \text{LENGTH} \div 2$$

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

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

$$\text{NET COST/VMT} = \text{COST/NMT} \square \text{CREDIT/VMT}$$

$$\text{COST/VMT} = \text{COST/LANE-MILE} \div \text{AVG LANE CAPACITY}$$

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"

$$\text{CREDIT/VMT} = \$/\text{GAL} \div \text{MPG} \times 365 \times \text{NPV}$$

\$/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 five percent 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 the building permit or development order approval, that:
 - a. The developer or owner will submit documentation, acceptable to the division of development services, that shows the proposed private use will have no off-site road impacts;
 - 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;
 - 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 referenced in this division will be administratively reviewed and reanalyzed every three years. As a result of this review, city staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis. In accordance with this section, the first review of the roads impact fee schedule must be completed and any amendments to the schedule presented to the city council for adoption no later than September 1, ~~2021~~ 2040.
- (f) ~~Automatic annual inflation adjustment. On January 1 following each calendar year during which the fee schedule was not comprehensively updated, an adjusted fee schedule shall become effective. The first automatic update of the fees shall become effective on January 1, 2009, and in accordance with section 163.31801, of the Florida Impact Fee Act, any increase will not take effect until 90 days after adoption of a resolution. The city manager shall publish on the city's web site and otherwise make publicly available the adjusted impact fee schedule. The city manager shall calculate adjustments to the impact fee rates based upon the percentage change over the most recently available preceding 12-month period in the engineering news-record construction cost index, or, if this index becomes unavailable, a comparable index.~~

(Ord. No. 05-02, § 3(2-266), 1-5-2005; Ord. No. 05-12, § 1, 7-20-2005; Ord. No. 07-14, § 1, 9-5-2007; Ord. No. 10-06, § 1, 7-7-2010; Ord. No. 13-21, § 1(2-266), 12-18-2013)

Sec. 2-198. - 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 feepayer 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 feepayer is entitled to a refund of the roads impact fee paid excluding the administrative fee. No interest will be paid to the feepayer 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 three percent 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 ten years from the date the roads impact fee was 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~~ three percent per annum.

(Ord. No. 05-02, § 3(2-271), 1-5-2005; Ord. No. 13-21, § 1(2-271), 12-18-2013)

Sec. 2-201. - 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, provided that no additional vehicular trips will be produced than those produced by the original use of the land where the original permit was issued on or before September 16, 1985.
 - (4) Building permits that were issued for commercial buildings and residential dwelling units, which have been reinstated by the Building Official in accordance with the Florida Building Code are exempt from the payment of impact fee increases that occurred after issuance of the original permit. However, no impact fee refund or credit will be granted if a net decrease results. 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, 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 fee 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. This impact fee exemption may be for full or partial payment, or a payment deferral as approved by City Council.
 - (10) Building permits that obtain a banked impact fee credit from the city. 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 homes, park trailers 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 or economic development program, or may grant nonprofit 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 are deemed waived by the feepayer.

(Ord. No. 05-02, § 3(2-274), 1-5-2005; Ord. No. 01-17; Ord. No. 13-21, § 1(2-274), 12-18-2013)

Sec. 2-202. - 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.
- (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.*
 - 1. A request submitted for road impact fee construction credits must include a detailed project description and complete cost estimates, prepared by 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 3 roads may be given at the discretion of the city council on a case-by-case basis if the council finds that:
 - A. The construction will not increase public infrastructure costs to serve the new development; and
 - B. 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.
 - 2. 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 public works estimate of the value of the accelerated construction of the road in relation to the city's schedule of planned road construction.

b. *Land dedication.*

1. 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 the 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.
 - (vi) An affidavit of interest in real property in accord with Florida Statutes §286.23. The affidavit must certify to Bonita Springs the name and address of every person having a beneficial interest in the real property, however small or minimal. The disclosure affidavit must specifically identify the property to be conveyed and be sworn before a notary.

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.

2. 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.

3. Credit for dedication of right-of-way will be limited to the minimum amount of right-of-way needed by county department of transportation or the city. Credit for Class 1 and 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:
 - (i) The dedication will not increase public infrastructure costs to serve the new development; and
 - (ii) 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.
 4. 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's or city's schedule of planned road construction. In every case, roads impact fee credits must be calculated consistent with F.S. §380.06 (5) ~~(16)~~.
- c. *Impact fee credit application requirement waiver.* The city manager or designee may waive one or more of the impact fee credit application requirements if the requirement is clearly not necessary to protect a city interest. A waiver granted by the city manager or designee must be in writing, and addressed to the applicant.
- (4) *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the city for maintenance in accordance with AC 06-03 (Resolution 06-149) or when the feepayer 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 are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the 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 the county or a participating municipality. 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 ten 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. Credits not used within ten years of issue will be canceled by the building official unless extended by city council. 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.* Roads impact fee credits 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 this section, the term "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.
 - (7) *Withdrawal.* 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 to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.
- (f) Reciprocity with the county. Credits issued by the 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.

(Ord. No. 05-02, § 3(2-275), 1-5-2005; Ord. No. 13-21, § 1(2-275), 12-18-2013)

SECTION TWO: CONFLICTS

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

SECTION THREE: SEVERABILITY

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

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

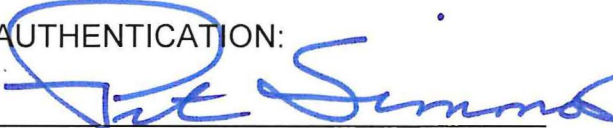
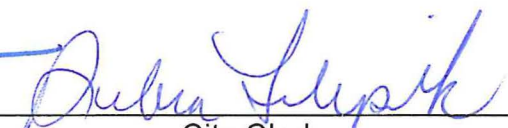
It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in

the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

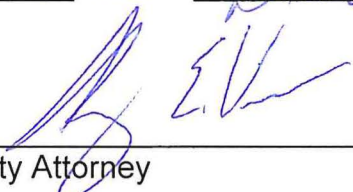
SECTION FIVE: EFFECTIVE DATE

The effective date of this ordinance shall be thirty (30) days from its adoption date, however, any increase in road impact fee calculations shall be in accordance with Florida Statutes §163.31801, requiring ninety (90) days' notice from its adoption date. Notwithstanding, any reductions in fee calculations shall be implemented by staff upon the effective date of this ordinance.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 18th day of July, 2018.

AUTHENTICATION:  

Mayor City Clerk

APPROVED AS TO FORM: 

City Attorney

Vote:

Carr	Aye	O'Flinn	Aye
DeWitt	Aye	Quaremba	Aye
Forbes	Nay	Simmons	Nay
Gibson	Nay		

Date filed with City Clerk: 7/20/18