

## **ORDINANCE 2022-38**

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 23, ARTICLE VII, DIVISION 4, "PUBLIC FACILITIES IMPACT FEES"; AMENDING SECTION 23-761 RELATING TO DEFINITIONS; SECTION 23-762 RELATING TO FINDINGS AND INTENT; AMENDING SECTION 23-763 ADOPTING THE MOBILITY PLAN AND MULTIMODAL TRANSPORTATION IMPACT FEE SCHEDULE; AMENDING SECTION 23-764 RELATING TO PAYMENT OF IMPACT FEES; AMENDING SECTION 23-765 RELATING TO ALTERNATIVE COLLECTION; AMENDING SECTION 23-766 RELATING TO ALTERNATIVE CALCULATION OF IMPACT FEES; AMENDING SECTION 23-767 RELATING TO EXEMPTIONS; AMENDING SECTION 23-768 RELATING TO CHANGE OF USE OR SIZE; AMENDING SECTION 23-769 RELATING TO VESTED RIGHTS; AMENDING SECTION 23-770 RELATING TO IMPACT FEE CREDIT; AMENDING SECTION 23-771 RELATING TO AFFORDABLE HOUSING; AMENDING SECTION 23-772 RELATING TO REVIEW HEARINGS; AMENDING SECTION 23-773 RELATING TO REFUNDS OF FEES; AMENDING SECTION 23-780 ESTABLISHING MULTIMODAL TRANSPORTATION IMPACT FEES BASED ON A MOBILITY PLAN; AMENDING AND RENUMBERING SECTION 23-780 TO 23-781 RELATING TO ANNUAL ADJUSTMENT OF IMPACT FEES; AMENDING AND RENUMBERING SECTION 23-781 TO 23-782 RELATING TO APPLICABILITY OF REVISED IMPACT FEES; AMENDING AND RENUMBERING SECTION 23-782 TO 23-783 RELATING TO REVIEW OF IMPACT FEES; AMENDING AND RENUMBERING SECTION 23-783 TO 23-784; PROVIDING FOR EFFECT ON OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, Section (2) of the Florida Constitution and Chapter 166, Florida Statutes, the City has broad home rule powers to adopt ordinances to provide for and operate multimodal transportation systems, including bicycle lanes, greenways, shared-use paths, sidewalks, trails, micromobility facilities, microtransit transit facilities, services and programs, roadways, intersections, shared mobility services, programs and technology with the city: and

**WHEREAS**, Section 163.3180(5)(f), Florida Statutes, encourages local governments (including municipalities such as the City) to develop tools and techniques including adoption of long-term strategies to facilitate development patterns that support multimodal solutions, adoption of area wide service standards that are not dependent on any single road segment function, and establish multimodal service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide an adequate level of personal mobility; and

**WHEREAS**, Section 163.31801, Florida Statutes, authorizes local governments to adopt impact fees; and

**WHEREAS**, the multimodal transportation impact fee focuses on person travel demand, which includes walking, biking, transit, and motor vehicular trips, generated by new development activity, as defined in this ordinance, and the resulting impact on multimodal capacity and accordingly requires the expenditure of revenue derived under that system to be used on multimodal projects identified in an adopted mobility plan that increase multimodal capacity; and

**WHEREAS**, the multimodal transportation impact fee includes, but is not limited to, considerations of the impact of person travel demand generated by new development and redevelopment on multimodal capacity as well as considerations of the impact of new development on overall mobility within the City; and

**WHEREAS**, the City is experiencing growth and new development activity that necessitates the addition and expansion of transportation facilities for a variety of modes to meet the person travel demands of new development activity including adequate and efficient multimodal facilities along with different personal and shared mobility options; and

**WHEREAS**, imposition of a multimodal transportation impact fee requiring future growth within the City to contribute its fair share of the cost of growth-necessitated multimodal facilities is necessary and reasonably related to the public health, safety, and welfare of the people of the City; provided that the multimodal transportation impact fee does not exceed the actual amount necessary to offset the demand on multimodal capacity and facilities generated by new development activity; and

**WHEREAS**, the City in its Transportation Element sets out goals, objectives and policies to develop and maintain a safe, convenient, efficient transportation system which: recognizes present need, reflects the Future Land Use Plan, and provides for safe, efficient intermodal transportation linkages; and

**WHEREAS**, the City Commission of the City (the "City Commission") finds that this Ordinance supports and furthers the goals, objectives and policies of the Transportation Element (TE) of the Comprehensive Plan as follows:

- GOAL II.1. "It shall be the goal of the City of Lake Wales to provide a safe and efficient transportation system for all modes of travel that is financially feasible, consistent with community needs, and environmentally sound;"
- Policy II.1.1.6. "Explore the establishment of road impact fees;"
- Policy II.1.1.17. "A Mobility Plan shall include provisions that address mobility between destinations. A Mobility Plan shall include a horizon year and the multimodal projects in a Mobility Plan shall be based upon the expected, anticipated or desired increase in new development, infill

development and redevelopment by the established horizon year and the associated increase in person travel demand;”

- Policy II.1.1.18. “The City, as part of a Mobility Plan or Fee, may adopt quality and/or level of service standards for pedestrians, bicycle, transit and other multi-modal facilities. Quality of Service (QOS) standards shall be related to the overall travel experience of the user with higher standards established in areas where walking, bicycling, transit and other non-vehicular modes of travel are encouraged. Level of Service (LOS) standards shall be related to the width or size of pedestrian, bicycle and non-vehicular facilities with wider and larger facilities in areas where non-vehicular modes of travel are encouraged and frequency of transit service with greater frequencies and spans of service in areas where transit is encouraged. The QOS and LOS standards may serve as benchmarks and used as performance measures;”
- Policy II.1.1.19. “A Mobility Plan may include complete street policies and/or design standards for the improvements identified in a Mobility Plan. A Mobility Plan may serve as a Master Plan for roads and transit within the City. The Mobility Plan may also function as a Bicycle, Pedestrian, Trails, Greenways and other non-vehicular modes or travel Master Plan;”
- Policy II.1.1.20. “A Mobility Plan may include complete street policies and/or design standards for the improvements identified in a Mobility Plan. A Mobility Plan may serve as a Master Plan for roads and transit within the City. The Mobility Plan may also function as a Bicycle, Pedestrian, Trails, Greenways and other non-vehicular modes or travel Master Plan;”

**WHEREAS**, the multimodal transportation impact fee imposed hereby (1) are in compliance with the "dual rational nexus test" developed under Florida case law, (2) meet the "essential nexus" and "rough proportionality" requirements established by the United States Supreme Court, in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), (3) are consistent with the requirements set forth in Section 163.3180, Florida Statutes, and (4) are consistent with and being imposed in accordance with Section 163.31801, Florida Statutes; and

**WHEREAS**, the City Commission has determined that the proposed Ordinance adopting a multimodal transportation impact fee will help to preserve and enhance the rational nexus between the need for multimodal person travel demands generated by new development activity in the City and the multimodal transportation impact fee imposed on that new development activity based on the multimodal improvements established in the mobility plan; and

**WHEREAS**, establishment of a multimodal transportation impact fee benefit district and trust fund regulates multimodal transportation impact fee expenditures and is the best method of ensuring that the multimodal projects funded by multimodal transportation impact fee have the rational nexus and benefit to the development for which the multimodal transportation impact fee were paid; and

**WHEREAS**, multimodal transportation impact fee collected will be deposited in the multimodal transportation impact fee trust fund created for the related multimodal transportation impact fee benefit district established herein and expended for the purposes set forth herein; and

**WHEREAS**, multimodal transportation impact fee imposed hereunder achieve the goals, objectives and policies of the Comprehensive Plan and utilize the tools and techniques encouraged by Section 163.3180, Florida Statutes; and

**WHEREAS**, the City has developed a Mobility Plan and Multimodal Transportation Impact Fee Technical Report dated July 2022 prepared by NUE Urban Concepts, LLC, that provides the technical analysis to determine the mobility fee, based on the multimodal improvements on City, County, and State right-of-way within and adjacent to the City identified in the mobility plan, which constitutes a proper factual predicate for imposition and expenditure of the mobility fees; and

**WHEREAS**, the City has determined that the enactment of this Ordinance adopting a mobility plan and multimodal transportation impact fee will help to preserve and enhance the rational nexus between the extraordinary increase in multimodal person travel demands generated by new development activity in the City, and the multimodal transportation impact fee imposed on that new development activity to fund multimodal improvements on City, County, and State right-of-way within and adjacent to the City in the mobility plan that address that demand; and

**WHEREAS**, the City Commission has noticed, advertised, scheduled and held a public hearing in compliance with Florida Statutes on this proposed Ordinance; and

**WHEREAS**, the City Commission has determined that it is advisable and in the public interest to adopt and implement the amended Public Facilities Impact Fees Ordinance.

**BE IT ENACTED**, by the City Commission of the City of Lake Wales,

**SECTION 1:**

Division 4. Public Facilities Impact Fees

§ 23-761. Definitions.

§ 23-762. Legislative findings and intent.

§ 23-763. Adoption of impact fee studies and impact fee schedules.

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- § 23-770. Developer contribution credit.
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- § 23-772. Review hearings.
- § 23-773. Refund of impact fees.
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- § 23-775. Wastewater system impact fees.
- § 23-776. Fire/rescue services impact fees.
- § 23-777. Police services impact fees.
- § 23-778. Parks and recreation impact fees.
- § 23-779. Library impact fees.
- § 23-780. Multimodal transportation impact fees.
- § 23-781~~0~~. Annual adjustment of impact fees.
- § 23-782~~1~~. Applicability of revised impact fees.
- § 23-783~~2~~. Review of impact fees required.
- § 23-784~~3~~. Declaration of exclusion from Administrative Procedures Act.

#### Division 4. Public Facilities Impact Fees

##### **§ 23-761. Definitions.**

When used in this division, the following words, terms or phrases shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Affordable housing shall mean a dwelling unit which is offered for sale or rent to low-income persons or very low-income persons and which monthly rent or monthly mortgage payments, including taxes and insurance, do not exceed thirty (30) percent of that amount which represents the percentage of the median adjusted gross income for low-income persons and very low-income persons.

Alternative impact fee shall mean any alternative fee calculated by an applicant and approved by the city manager or city commission pursuant to section 23-765.

Encumbered shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery or completion of goods, services or real property provided by a vendor, supplier, contractor or owner.

Fees shall mean, collectively, the impact fees imposed pursuant to this division.

Impact fee shall mean, collectively, the impact fees imposed pursuant to this division.

Impact fee study shall mean the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section 23-779.

Infill lot shall mean any single vacant lot located in a predominately built-up area served by city utilities, which is bounded on two (2) or more sides by existing development. In

addition, any lot that contains an existing building which will be removed and replaced with a new building shall also be considered an infill lot.

Mixed use construction shall mean construction in which more than one (1) impact fee land use category is contemplated, with each category consisting of a separate and identifiable enterprise not subordinate to or dependent on other enterprises within the construction.

Mobility plan shall mean a plan of multimodal projects that serve as the basis for development of a mobility plan and incorporated in the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section 23-779, or as adopted in the Comprehensive Plan.

Owner shall mean the person holding legal title to the real property upon which public facilities impact construction is to occur.

Person shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

Public facilities shall mean those facilities identified in this division for which impact fees are imposed.

Public facilities impact construction shall mean land development which changes the use of land in a manner which increases the impact upon the public facilities for which impact fees are imposed under this division.

Residential shall mean apartments, condominiums, mobile homes or single-family detached houses.

Site-related improvement shall mean any improvement constructed on the development site which is required to connect a building or structure with a city capital facility.

(Ord. No. 2008-08, § 1, 3-4-08)

### **§ 23-762 Legislative findings and intent.**

- a. Both existing development and development resulting from growth, as contemplated by the comprehensive plan, will require improvements, and additions to public facilities to accommodate and maintain the level and quality of service adopted by the city.
- b. Future growth represented by public facilities impact construction should contribute its fair share to the cost of improvements and additions to public facilities that are required to accommodate the use of such facilities by growth.
- c. The required improvements and additions to the public facilities needed to accommodate existing development at the adopted level and quality of service shall be financed by revenue sources other than impact fees.
- d. Implementation of an impact fee structure to require future public facilities impact construction to contribute its fair share of the cost of improvements and additions to public facilities is an integral and vital element of the management of growth.

- e. Public facilities planning is an evolving process and the level and quality of service adopted by the city for such public facilities constitutes a balancing of anticipated need and the corresponding cost to implement such standard, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns, the needs of the community and the dynamics of public facilities planning, it is the intent of the commission that the level and quality of service and the cost of the various public facilities be reviewed and adjusted periodically, pursuant to section 23-779, to insure that the impact fees imposed pursuant to this division are equitable and lawful based on the impact of growth upon these public facilities.
- f. This ordinance shall not be construed to permit the collection of impact fees from public facilities impact construction in excess of the amount reasonably anticipated to offset the need for and demand on those public facilities generated by such impact construction.
- g. This division is intended to be consistent with the principles for allocating a fair share of the cost of new public facilities to new users as established by the Florida Supreme Court in the case of Contractor and Builders Association of Pinellas County vs. City of Dunedin, 329 So. 2nd 314 (FL 1976) and to meet the requirements of the "Florida Impact Fee Act," F.S. ch. 163.31801, particularly the requirement that impact fees are to be based on "the most recent and localized data."  
(Ord. No. 2012-03, § 1, 2-7-12)

**§ 23-763. Adoption of studies and Schedules. ~~impact fee study and impact fee schedule.~~**

- a. The commission hereby adopts and incorporates by reference the study entitled "Development Impact Fees—City of Lake Wales, Florida" prepared by Clarion Associates and dated December 26, 2011 particularly the assumptions, conclusions and findings in such study as to the allocation of anticipated costs of capital improvements and additions to the capital facilities between those costs required to accommodate existing development and those costs required by growth. The impact fee schedule shall be as set forth in said study on "Figure 2A—Proposed Impact Fees in North and South Service Areas."
- b. The commission hereby adopts and incorporates by reference the study entitled "The City of Lake Wales Mobility Plan and Multimodal Transportation Impact Fee Technical Report" prepared by NUE Urban Concepts, LLC and dated July 2022. This adoption includes, but is not limited to, the following: the multimodal projects included in the mobility plan, the basis of the assumptions, conclusions, and findings in such study as to the basis of the multimodal transportation impact fee, the methodology for calculating the mobility fee, the person miles of capacity assigned to multimodal projects and the person travel demand assigned to various use categories. The study presents the technical analysis and detailed methodology supporting the City of Lake Wales Mobility Fees consistent with the multimodal projects included in the 2045 City of Lake Wales Mobility Plan. The 2045 City of Lake Wales Mobility Plan consist of a Complete Streets Plan, a Streetscape and Street Trees Plan, and a Transit Circulator Plan, tables identifying specific

multimodal projects reflected on the plans, and multimodal projects consisting of services and programs not reflected on the plans, such as traffic calming and mobility equity programs. The multimodal transportation impact fee schedule shall be as set forth in said study entitled City of Lake Wales Mobility Plan and Multimodal Transportation Impact Fee Technical Report. The Technical Report shall be maintained and made available by the City upon request.

(Ord. No. 2006-04, § 1, 2-21-2006; Ord. No. 2012-03, § 2, 2-7-12)

### **§ 23-764 Payment of impact fees.**

- a. Except as otherwise provided in this article, prior to the issuance of a building permit for a public facilities impact construction, an applicant shall pay the appropriate impact fees as established by this division.
- b. The obligation for payment of the impact fees shall run with the land.
- c. In the event that a building permit issued for a public facilities impact construction expires prior to completion of the public facilities impact construction for which it was issued, the applicant may within ninety (90) days of the expiration of the building permit apply for a refund of the impact fees. Failure to timely apply for a refund of the impact fees shall waive any right to a refund.
  1. The application for a refund shall be filed with the administrative official and shall contain the following:
    - A. The name and address of the applicant;
    - B. The locate of the property which was the subject of the building permit;
    - C. The date the impact fee was paid;
    - D. A copy of the receipt of payment for the impact fees; and
    - E. The date the building permit was issued and the date of expiration.
  2. After verifying that the building permit has expired and the public facilities impact construction has not been completed, the administrative official shall refund the impact fees paid for such public facilities impact construction.
  3. A building permit which is subsequently issued for a public facilities impact construction on the same property which was the subject of a refund shall pay all impact fees as established by this division.
- d. In the event that the city issues separate building permits for a building or part of a building within a public facilities impact construction which by design contemplates phased occupancy, the city and the applicant may enter into an agreement for the phased payment of the impact fees applicable to that portion of the public facilities impact construction represented by such building, provided, however, that all impact fees due shall be paid prior to the issuance of the final building permit for the building.
- e. The payment of all impact fees shall be in addition to other fees, charges or assessments imposed by the city for the issuance of a building permit.
- f. Prior to the issuance of a building permit, the applicant of a public facilities impact construction may enter into a fee agreement with the city providing for the payment



of the impact fees at a time other than as provided in this division. Such an agreement shall require the applicant to post an irrevocable letter of credit payable by a financial institution, acceptable to the city, to ensure payment of the fees at a time other than prior to issuance of the building permit.

1. The irrevocable letter of credit shall contain no conditions upon the obligation of the issuer for the payment of the principal amount and any interest due thereon.
2. Except as otherwise approved by the city commission, no deferral of the payment of impact fees shall extend for a period greater than one (1) year from the date of the building permit, provided that the city manager may approve an additional period of six (6) months upon good cause shown, and subject to the submission of a new application. Any requests for a six-month extension must be made in writing at least thirty (30) days prior to the expiration date of the irrevocable letter of credit.
3. Notwithstanding that the applicant may obtain a deferral to a date certain, all impact fees shall be paid at either the date to which the payment has been deferred or the issuance of a certificate of occupancy for the public facilities impact construction, whichever occurs first except as otherwise approved by city commission.

(Ord. No. 2007-14, § 4, 6-5-07)

### **§ 23-765. Alternative impact fee calculation**

- a. In the event an applicant believes that the impact to the public facilities necessitated by a public facilities impact construction is less than the fees established by this division, such applicant may, prior to issuance of a building permit for such public facilities impact construction, submit a calculation of an alternative impact fee to the city manager pursuant to the provisions of this section. The city manager shall review the calculations and make a determination within ten (10) business days of submittal as to whether such calculation complies with the requirements of this section.
- b. The alternative impact fee calculations shall be based on data, information or assumptions contained in this division, the impact fee study or independent sources, provided that:
  1. The independent source is a generally accepted standard source of planning information and cost impact analysis performed pursuant to a generally accepted methodology of planning and cost impact analysis performed pursuant to a generally accepted methodology of planning and cost impact analysis which is consistent with the impact fee studies study;
  2. The independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology of planning and cost impact analysis which is consistent with the impact fee studies; or
  3. The independent source is based upon recent available data from the Trip

Generation Report by the Institute of Transportation Engineers (ITE) for the land use category in question.

- c. If a previously approved public facilities impact construction project submitted, during its approval process, an alternative impact fee study substantially consistent with the criteria required by this section, and if such study is determined by the city manager to be current, the impact upon the public facilities as determined by such previously approved public facilities impact construction shall be presumed to be as described in the prior study. There shall be a rebuttable presumption that an alternative impact fee study conducted more than twelve (12) months ~~two (2) years~~ earlier is invalid.
- d. If the city manager determines that the data, information and assumptions utilized by the applicant to calculate the alternative impact fees comply with the requirements of this section, the alternative ~~impact~~ fees shall be paid in lieu of the fees established by this division.
- e. If the city manager determines that the data, information and assumptions utilized by the applicant to calculate the alternative impact fees do not comply with the requirements of this section, then the city shall provide to the applicant by certified mail, return receipt requested, written notification of the rejection of the alternative ~~impact~~ fees and the reason therefor. The applicant shall have fifteen (15) calendar days from receipt of the written notification of rejection to request a hearing pursuant to section 23-772.

(Ord. No. 2006-04, § 1, 2-21-2006)

### **§ 23-766 Alternative Collections of Fees.**

In the event that impact fees are not paid prior to the issuance of a building permit for the affected public facilities impact construction, the city shall proceed to collect the impact fees as follows:

- a. The city shall serve, by certified mail, return receipt requested, a notice of impact fees upon the applicant at the address appearing on the most recent records maintained by the property appraiser of the county. Service of the notices of impact fees shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicated the notices was received by either the applicant or the owner or the agent of either by execution of the return receipt, whichever occurs first. The notice of impact fees shall contain the legal description of the property upon which the public facilities impact construction occurred and shall advise the applicant and the owner as follows:
  - 1. The amount due and the general purpose for which impact fees were imposed;
  - 2. That a hearing pursuant to section 23-772 may be requested within fifteen (15) calendar days from the date of receipt of the notice of impact fees, by making application to the city manager;
  - 3. That the impact fees shall be deemed delinquent if not paid and received by

the city within sixty (60) calendar days of the date the notice of impact fees is received, excluding the date of receipt, or if hearing is not requested pursuant to section 23-772, and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid; and

4. That in the event the impact fees become delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records of the county.
- b. The impact fees shall be delinquent if within sixty (60) calendar days from the date of receipt of the notice of impact fees by either applicant or owner, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to section 23-772. In the event a hearing is requested pursuant to section 23772, the impact fees shall become delinquent if not paid within thirty (30) calendar days from the date the commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Saturdays, Sundays, and legal holidays, but excluding the date of the earliest receipt of said impact fee statement or the date of the commission's decision, in the event of an appeal. In the event the event of the thirtieth day prior to becoming delinquent falls on a Saturday, Sunday, or legal holiday, then the impact fees shall become delinquent at 5:00 p.m. of the next business day. Upon becoming delinquent, a delinquency fee equal to ten (10) percent of the total impact fees imposed shall be assessed. Such total impact fees, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.
  - c. Should the impact fees become delinquent as set forth in paragraph b., the city shall serve, by certified mail, return receipt requested, a notice of lien upon the delinquent applicant and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and the delinquent owner that due to their failure to pay the impact fees, the city shall file a claim of lien with the clerk of the circuit court.
  - d. Upon the mailing of the notice of lien, the city clerk shall file a claim of lien with the clerk of the circuit court for recording in the official records of the county. The claim of lien shall contain the legal description of the property upon which the public facilities impact construction occurred, the amount of the delinquent impact fee and the date of its imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein.
  - e. After the expiration of one (1) year from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. ch. 173, and any amendments thereto, which provisions are hereby

incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

- f. The liens for delinquent impact fees imposed hereunder shall remain liens coequal with the liens of all state, county, district, and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided herein.
- g. The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to, and in addition to all other applicable procedures provided in any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida, and any amendments thereto. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida.  
(Ord. No. 2006-04, § 1, 2-21-2006)

### **§ 23-767. Exemptions.**

*Effective: Tuesday, March 01, 2022*

The following shall be exempted from payment of impact fees:

- a. Alterations, expansions, or replacement of an existing dwelling unit which do not increase the number of families for which such dwelling unit is arranged, designed, or intended to accommodate for the purpose of providing living quarters.
- b. The alteration or expansion of an accessory building or structure which will not create additional dwelling units or will not increase the usable square footage space associated with the principal building on the land.
- c. The replacement of a dwelling unit or building with a new dwelling unit or building of the same size and use and which will not increase the square footage associated therewith; provided that the replacement of a dwelling unit or building which has been destroyed or otherwise rendered uninhabitable must be replaced within five (5) years of the date it was destroyed or rendered uninhabitable in order to be exempted from the payment of impact fees.
- d. Municipal buildings.
- e. Affordable housing in accordance with section 23-771
- f. Special districts. Any person seeking an exemption under the provisions of this section must submit an application to the administrative official with application for a building permit for the proposed construction or for a change of use. The application shall be made on a form provided by the city, and a legal description of the property shall be required. The city manager shall approve the exemption if it meets the criteria for the special district in which it is located.
- g. Community Redevelopment Area. The construction, alteration, or expansion of a non-residential structure within a community development area designated by the city's community redevelopment plan shall be exempt from the payment of police

and fire impact fees. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764. This exemption shall also not extend to construction, alteration, or expansion on non-residential structures on property formerly known as the Cooperative Fruit Property and located on the east side of U.S. Highway 27.

- h. National Historic Register District. The construction, alteration, or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic district regulatory board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764.
- i. Core Improvement Area. The construction, alteration or expansion or change in the use of any structure within the "core improvement area" shall be exempt from the payment of impact fees except those for water and sewer, which are payable in accordance with section 23-764. The exemption includes Polk County impact fees per an agreement executed November 20, 2007 between the Polk County Board of County Commissioners and the City of Lake Wales.
- j. The construction, alteration, or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic preservation board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2008-29, § 3, 9-2-08; Ord. No. 2022-06, § 1, 3-01-22)

### **§ 23-768. Change of Size or use.**

- a. Impact fees shall be imposed and calculated for the alteration, expansion, or replacement of a building or dwelling unit or the construction of an accessory building if the alteration, expansion, or replacement of the building or dwelling unit or the construction of an accessory building results in a land use determined to:
  - 1. increase the number of dwelling units;
  - 2. increase the usable square footage; or
  - 3. change the land use so as to constitute a different impact fee land use category.
- b. The impact fees imposed under the applicable impact fee rate shall be calculated as follows:
  - 1. If the impact fees are calculated on land use and not square footage, the impact fees imposed shall be the impact fees due under the applicable

impact fee rate for the impact fee land use category resulting from the alteration, expansion, or replacement, less the impact fee that would be imposed under the applicable impact fee rate for the impact fee land use category prior to the alteration, expansion, or replacement. In determining the impact fee which would have been imposed for the land use category prior to the alteration, expansion or replacement, the use of land during the previous three (3) years which provided the highest impact upon the public facilities shall be utilized.

2. In the event the square footage of an office building or retail building, as defined herein, is increased, the impact fee rate for the increased square footage represented by public facilities impact construction shall be at the impact fee rate applicable to public facilities impact construction with square footage equal to the existing square footage, plus the contemplated increased square footage. However, the impact fee shall be calculated only upon the increased square footage.

(Ord. No. 2006-04, § 1, 2-21-06)

### **§ 23-769. Vested Rights.**

- a. Any public facilities impact construction for which a building permit meeting all appropriate requirements for issuance was applied prior to June 20, 1995, shall be exempt from the provisions of this division. The owner of such public facilities impact construction is entitled to a vested rights exemption.
- b. In the event that a building permit for a public facilities impact construction applied for prior to June 20, 1995 expires or is revoked, then such public facilities impact construction shall not be entitled to a vested rights exemption for any subsequently issued building permit for such public facilities impact construction.
- c. Any written agreement entered into prior to June 20, 1995 between an owner and the city which establishes, restricts or prohibits the imposition of impact fees by the city, shall be binding upon the city and shall not be subject to the provisions of this division, provided, that if such written agreement is amended to increase the amount of public facilities impact construction permitted on the property, then such additional public facilities impact construction shall be required to pay the impact fees as provided by the division.

(Ord. No. 2006-04, § 1, 2-21-06)

### **§ 23-770. Developer contribution credit.**

- a. The city may grant a credit against the impact fees imposed herein for the donation of land or equipment, or the construction of public facilities made pursuant to a development agreement approved in accordance with division 2 of this article. Such donation or construction shall not be site-related improvements and shall be subject to the approval of the city commission.

- b. Prior to the issuance of a building permit the applicant shall submit to the administrative official a proposed plan and estimates of costs for contributions to the public facilities. The proposed plan and estimates shall include:
  - 1. A legal description of any land proposed to be donated and a written appraisal prepared in conformity with paragraph c.4.A. below;
  - 2. A list of the contemplated public facilities improvements, apparatus or equipment sought to be donated;
  - 3. An estimate of proposed construction costs certified by a professional architect or engineer;
  - 4. A written statement of the actual cost for any equipment or apparatus sought to be donated; and
  - 5. A proposed time schedule for completion of the proposed plan.
- c. The administrative official shall review the proposed plan and determine:
  - 1. If such proposed plan is in conformity with contemplated improvements and additions to the public facilities;
  - 2. If the proposed donation of land or equipment or proposed construction by the applicant is consistent with the public interest; and
  - 3. If the proposed time schedule is consistent with the city's capital improvement program for the public facilities.
- 4. The amount of developer contribution credit based upon the following standards of valuation:
  - A. The value of donated land shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between related parties in the bargaining transaction;
  - B. The cost of construction of public facilities shall be based upon the lowest of three (3) bids to perform construction in conformity with all construction standards of the city; and
  - C. The value of apparatus and equipment shall be based on the actual cost.
- d. Upon presentation of the plan to the city commission and approval of a development agreement pursuant to division 2 of this article, a revised impact fee statement shall be issued to the applicant reflecting the amount of impact fees due following the granting of the credit.
- e. Any applicant shall have a right of review pursuant to section 23-772 of the valuation by the administrative official of the developer contribution credit. However, there shall be no right of review as to the determination of the city commission to accept or reject the proposed plan of donation or construction.
- f. No credit shall be granted for the donation of land or equipment or for the construction of public facilities unless such donation or construction would be an authorized expenditure for the particular impact fee.
- g. The credit granted for the donation of land or equipment for the construction of public facilities by an applicant shall only be applied as a credit against the impact

fee which provides the funds for the specific capital facility.  
(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 3, 2-7-12)

**§ 23-771. Affordable housing.**

- a. The city shall exempt from the payment of ~~impact~~ fees imposed pursuant to this division any public facilities impact construction consisting of a single dwelling unit or duplex built on an infill lot within the city which will either: (1) be sold or rented for an amount which qualifies as affordable housing; (2) be funded in whole or in part by monies received pursuant to tax grant or subsidy from the United States, State of Florida, Polk County or City of Lake Wales, the use of which is specifically restricted to provide for the construction of affordable housing. For the purposes of this section, the term "infill lot" is defined as any single vacant lot located in a predominately built-up area served by city utilities, which is bounded on two (2) or more sides by existing development. In addition, any lot that contains an existing building which will be removed and replaced with a new building shall also be considered an infill lot.
- b. Any person seeking an affordable housing exemption for new dwelling unit shall file with the city manager an application for exemption prior to receiving a building permit for unit. The application for exemption shall contain the following:
  1. The name and address of the owner;
  2. The legal description of the property upon which the unit(s) shall be constructed;
  3. The proposed selling price if the unit(s) will be offered for sale or the proposed rental price if unit(s) will be offered for rent;
  4. The number of bedrooms which the dwelling unit(s) will contain; and
  5. Evidence that the unit(s) is funded by a governmental affordable housing program, if applicable, including any terms, restrictions and conditions as to its use, if applicable;
  6. Copy of the impact fee exemption application or approved exemption from the Polk County Manager, if applicable.
  7. Evidence that the unit(s) shall be occupied by low-income or very-low income persons;
- c. If the unit(s) meets the requirements for an affordable housing exemption, then the city manager shall issue an impact fee exemption. The impact fee exemption shall be presented in lieu of payment of the public facilities impact fees.
- d. For a residential unit to receive an affordable housing exemption, the monthly rent or mortgage payment, including taxes and insurance, shall not exceed thirty (30) percent of the monthly income of a low-income household in Lake Wales, and such restriction must continue for a period of at least seven (7) years from the issuance of the building permit. For properties proposed for sale, such restriction shall be contained either within the deed for the property, within the terms, restrictions and conditions of the direct government grant or subsidy, or within the terms of a development agreement entered into pursuant to the Florida Local Government



Development Agreement Act. For units proposed for rental, such restriction shall be contained in any lease or rental agreement between the owner and renter, and a notarized affidavit by the owner attesting that the rental fee meets the current restricted amount and that a copy of the affidavit has been given to the renter(s) shall be provided to the city no later than October 30 of each year. Any violation of the reporting requirements or the restriction on rental amount shall result in a requirement for payment by the owner of all impact fees waived under this section.

- e. In determining the total monthly rental charge for the purpose of determining eligibility for an impact fee exemption, all payments which are required to be made by a tenant as a condition of residing at such dwelling unit shall be included.
- f. An applicant who has been denied an impact a fee exemption may request a review hearing on such decision pursuant to section 23-772.  
(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2008-08, § 1, 3-4-08)

### **§ 23-772. Review Hearings.**

- a. An applicant or owner who is required to pay impact fees pursuant to this division, shall have the right to request a review hearing.
- b. Such hearing shall be limited to the review of the following:
  - 1. The application of the appropriate impact fees pursuant to this division.
  - 2. The failure to grant or the granting of insufficient alternative impact fees pursuant to section 23-766.
  - 3. The granting of insufficient credits for the donation of land or equipment or construction of public facilities pursuant to section 23-770.
  - 4. The failure to grant an affordable housing exemption pursuant to section 23-771.
- c. Except as otherwise provided in this division, such hearing shall be requested by the applicant or owner within fifteen (15) days, including Saturdays, Sundays and legal holidays, of the date of first receipt of the following, whichever is applicable:
  - 1. the impact fee statement;
  - 2. the notice of impact fees;
  - 3. the notification of the determination of any alternative impact fee;
  - 4. the notification of decision on the application for credit for the donation of land and equipment, or construction credit; or
  - 5. the notification of the denial of an affordable housing exemption.
- d. Failure to request a hearing within the time provided shall be deemed a waiver of any right for consideration of administrative relief.
- e. The request for hearing shall be filed with the city manager and shall contain the following:
  - 1. The name and address of the applicant or owner;
  - 2. The address of the property in question;
  - 3. If issued, the date the building permit was issued;
  - 4. A brief description of the nature of the construction being undertaken pursuant to the building permit;
  - 5. If paid, the date the impact fees were paid; and

6. A statement of the reasons why the applicant or owner is requesting the hearing.
- f. Upon receipt of such request, the administrative official shall schedule a hearing before the commission at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant or owner written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
- g. Such hearing shall be before the commission and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- h. Any applicant or owner who requests a hearing pursuant to this section and desires issuance of the building permit, or if a building permit has been issued without the payment of all impact fees, shall either pay all applicable impact fees or provide the city with an irrevocable letter of credit drawn on a financial institution acceptable to the city in the amount of the applicable impact fees. The payment or the providing of the irrevocable letter of credit shall be made prior to or at the time the request for hearing is filed. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.
- i. An applicant or owner may request a hearing under this section without paying the applicable impact fees, but no building permit shall be issued until all impact fees are paid in the amount initially calculated or the amount determined upon completion of the review provided for in this section.

### **§ 23-773. Refunds of impact fees.**

- a. ~~Impact~~ fees collected pursuant to this division shall be returned to the then current owner of the property on behalf of which such fees were paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the eighth anniversary of the date upon which such fees were paid.
- b. Refunds shall be made only in accordance with the following procedures:
  1. The then current owner shall petition the commission for the refund prior to the end of the fiscal year following the end of the fiscal year in which occurs the date of the eighth anniversary of the payment of impact fees.
  2. The petition for refund shall be submitted to the city manager and shall contain:
    - A. A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the ~~imp~~act fees were paid;
    - B. A copy of the dated receipt issued for payment of such fees, or such other record as would indicate payment of such fees;
    - C. A certified copy of the latest recorded deed; and
    - D. A copy of the most recent ad valorem tax bill.
- c. Within three (3) months from the date of receipt of a petition for refund, the city manager will advise the petitioner and the city commission of the status of the

impact fees requested for refund, and if such impact fees have not been spent or encumbered within the applicable time period, then it shall be returned to the petitioner with any interest which may have been earned on such impact fees. For the purpose of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out.

### **§ 23-780. Multimodal Transportation Impact Fees.**

- a. Findings applicable to multimodal transportation impact fees. In addition to the findings contained in section 23-762, the commission hereby specifically ascertains, determines, and declares as follows:
  1. The multimodal projects identified in the mobility plan of the city are designed and intended to provide for the multimodal mobility needs of its residents, businesses, and visitors.
  2. The providing of multimodal projects is the responsibility of the city imposed pursuant to Florida Statutes. Development in the city also has a multimodal impact to county and state roads and the mobility plan identifies multimodal projects on city, county, and state roads.
  3. The multimodal transportation impact fees imposed by the division are intended to allow new development to mitigate its impact to the transportation system through payment of a mobility fee to the City.
  4. The multimodal projects of the city funded by the multimodal transportation impact fee provide a specific benefit to development activity that pay the multimodal transportation impact fee. The commission expressly approves of the quality of service standards for multimodal projects as established in the Mobility Plan.
  5. The existing multimodal projects which has been funded by revenues other than multimodal transportation impact has eliminated any deficiency between existing multimodal projects and quality of service standards.
- b. Imposition of multimodal transportation impact fee. All transportation impact construction occurring within the city, shall pay the multimodal transportation impact fees as established within Schedule "C", which is attached hereto and incorporated by reference.
- c. Establishment of multimodal transportation impact fee trust account. The commission hereby establishes a separate trust account for the multimodal transportation impact fee, to be designated as the "Multimodal Transportation Impact Fee Trust Account," which shall be maintained separate and apart from all other accounts of the city. All such multimodal transportation impact fees shall be deposited into such trust fund immediately upon receipt.
- d. Use of multimodal transportation impact fees. The monies deposited into the Multimodal Transportation Impact Fee Trust Account shall be used solely for the purpose of funding multimodal projects identified in the mobility plan, including, but not limited to:

1. Planning, design, and construction of multimodal projects;
  2. Permitting and mitigation of environmental or wetland impacts;
  3. Land acquisition, including any costs of acquisition, condemnation, or easements;
  4. Design and construction of new drainage facilities and relocating or extending of utilities required by the construction of multimodal projects;
  5. Landscaping;
  6. Construction management and inspection;
  7. Surveying, soils, and material testing;
  8. Acquisition of collection materials necessary to provide multimodal transportation programs and services established in the mobility plan;
  9. Repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the construction, acquisition or improvements herein defined;
  10. Payment of principal to repay any bonds or other indebtedness issued by the city to provide funds to acquire land, construct multimodal projects or provide mobility programs and services subsequent to the adoption of this division, to the extent such repayment is consistent with statutory requirements.
- e. Restrictions on use of multimodal transportation impact fees. Funds on deposit in the Multimodal Transportation Impact Fee Trust Account shall not be used for any expenditure that would be classified as an administrative, maintenance, repair, or other operating expense, unless otherwise provided for in the mobility plan to implement adopted quality of service standards.
- f. Investment of multimodal transportation impact fees. Any funds on deposit which are not immediately necessary for expenditure may be invested by the city. All income derived from such investments shall be deposited in the Multimodal Transportation Impact Fee Trust Account and used as provided herein.
- g. Expenditure of multimodal transportation impact fees outside the City. The multimodal transportation impact fees benefit districts established in the mobility plan and multimodal transportation impact fee study provide for the expenditure of multimodal transportation impact fees outside city limits but within the benefit district, for multimodal projects identified in the mobility plan. For any expenditure of multimodal transportation impact fees within the extra jurisdictional benefit district, the city manager or designee shall make a written finding of fact that the expenditure of fees within the extra jurisdictional benefit district is consistent with the mobility plan and provides a mobility benefit to the new development that paid the multimodal transportation impact fees.

**§ 23-7810- Annual adjustment of impact fees.**

Impact fees shall be automatically adjusted on June 1 of each year for annual change in the Consumer Price Index (CPI) for Construction Products (the "Construction Costs Index") through March as published by the U.S. Department of Labor, Bureau of Labor Statistics or the Florida Department of Transportation Construction Cost Inflation Factors. The adjustment shall be calculated by the finance director who shall revise the impact fee schedules and provide a copy of same to department heads as applicable. The revised impact fee schedules shall also be provided to the city clerk who shall attach it to the ordinance from which this section is derived in the official records of the city. Date of revision shall be clearly indicated on the revised schedule. This section shall serve as meeting the 90 day notice requirement for new fees as required by Florida Statute. (Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 6, 2-7-12)

### **§ 23-7824 Applicability of revised impact fees.**

The impact fees established in this division shall apply to all development for which building permit applications are submitted to the city and to all changes of use of property within the city.

(Ord. No. 2006-04, § 1, 2-21-06; Ord. No. 2012-03, § 7, 2-7-12)

### **§ 23-7832- Review of revised impact fees.**

- a. The provisions of this division and the impact fee study and multimodal transportation impact fee study adopted herein shall be reviewed by the city commission initially in connection with its capital improvements element of its comprehensive plan as required by F.S. § 163.3177. Thereafter, the provisions of this division and each impact fee study adopted herein shall be reviewed at least every four (4) years and updated no longer than every five (5) years. five (5) years. The initial and each subsequent review shall consider new estimates of population per household, needs for service, and other socioeconomic data; future growth in travel demand; changes in cost of construction, land acquisition, apparatus, equipment, and related costs; review of the level and quality of service; and adjustments to the assumptions, conclusions or findings set forth in the impact fee study studies adopted herein. The purpose of this requirement is to review and revise, if necessary, to ensure that the impact fees neither exceed nor fail to provide for the reasonably anticipated costs associated with the improvements necessary to offset the demand generated by the public facilities impact construction on the city's public facilities. In the event the review required by this section alters or changes the assumptions, conclusions and findings of the studies adopted by reference in this division, revises or changes the city's public facilities or alters or changes the amount of impact fees, the studies adopted by reference herein shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and this division shall be amended to adopt by reference such updated studies.
- b. In conjunction with the initial and each subsequent review of the impact fee study studies required in paragraph a. of this section, the city commission shall review the capital improvements element for the availability and adequacy of revenue sources

to construct improvements and additions to the city's public facilities determined in the impact fee ~~study~~ studies to be required to accommodate existing development. Ord. No. 2012-03, § 8, 2-7-12)

**§ 23-7843. Declaration of exclusion from Administrative Procedures Act.**

Nothing contained in this division shall be construed or interpreted to include the city in the definition of "agency" contained in F.S. § 120.52, or to otherwise subject the city to the application of the Administrative Procedure Act, F.S. ch. 120. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this division, including specifically, but not limited to, a review hearing under section 23-772.

**Section 2:**

**Severability:** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated.

**Section 3:**

**Effective date:** This ordinance shall become effective 90 days after passage by the city commission.

CERTIFIED AS TO PASSAGE this \_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_

Mayor/Commissioner  
City of Lake Wales, Polk County, FL

ATTEST: \_\_\_\_\_

City Clerk