

8. Ordinance 2024-40, amending the Code or Ordinances, by creating Title X, Impact Fees, final reading.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Lisa Frazier, Growth Management Director

**THRU:** Suzanne Sherman, City Manager

**DATE:** September 19, 2024

**RE:** Ordinance 2024-40, amending the Code of Ordinances, by creating Title X, Impact Fees, final reading.

### SUMMARY:

The Palm Bay 2045 Comprehensive Plan Future Land Use Element was adopted on May 1, 2023, and became effective on June 10, 2023. The remaining Palm Bay Comprehensive Plan Elements were adopted on May 18, 2023, and became effective on July 20, 2023. To bring the Land Development Code into compliance with the Comprehensive Plan, an update has been drafted for consideration by the City Council.

The proposed update is more concise and only includes requirements pursuant to Chapter 163, F.S. As such, some regulations are proposed to be moved to other parts of the Palm Bay Code of Ordinances as new "Titles", "Chapters", "Sub-Chapters", and "Sections".

To facilitate the relocation, and to retain the City's authority to regulate certain issues, new "Titles", "Chapters", "Sub-Chapters", and "Sections" were created as listed below.

- Title X, Impact Fees Chapter 103 was created for the relocation of Parks, Police, and Fire Impact Fees
- Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way was created and added to Title IX, General Regulations
- Chapter 204, Stormwater Management Utility was created and added to Title XX, Utilities Code
- Chapter 205, Water Shortage Emergency was created and added to Title XX, Utilities Code
- Chapter 102, Public Nudity was created and added to Title IX, General Regulations
- Provisions for emergency power and pumping equipment in residential areas was moved to Title XX, Utilities Code, Chapter 201, Sewer Use, Subchapter Private Lift Stations
- Section 74.25, Regulation of Vehicles In Residential Areas was created and added to Title VII, Traffic and Vehicles, Chapter 74, Stopping, Standing, and Parking, Subchapter Parking Regulation
- Chapter 75, Golf Carts was created and added to Title VII, Traffic and Vehicles
- Subchapter 33, Fire Prevention and Protection; Buildings and Structures was created and added

Honorable Mayor and Members of the City Council

Legislative Memorandum

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to Title III, Administration, Chapter 33, Fire Department

Upon repeal and replacement of Title XVII, Land Development Code, the aforementioned regulations will be retained in other sections of the Palm Bay Code of Ordinances.

**REQUESTING DEPARTMENTS:**

City Attorney's Office

Fire

Police

Recreation

**FISCAL IMPACT:**

None.

**STAFF RECOMMENDATION:**

Staff recommends approval of the proposed ordinance.

**ATTACHMENTS:**

1. Ordinance

## ORDINANCE 2024-40

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, BY CREATING TITLE X, IMPACT FEES, CHAPTER 103, IMPACT FEES, SUBCHAPTERS 'PARKS POLICE, AND FIRE IMPACT FEES, 'TRANSPORTATION FACILITIES IMPACT FEES', AND 'WATER AND WASTEWATER IMPACT FEES'; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances is hereby amended by creating Title X, Impact Fees, Chapter 103, Impact Fees, Subchapter 'Parks, Police, and Fire Impact Fees', which shall henceforth read as follows:

### **">>PARKS, POLICE, AND FIRE IMPACT FEES**

#### **SECTION 103.01 AUTHORITY AND APPLICABILITY.**

(A) The City Council has the authority to adopt this part pursuant to Fla. Const. Art. VIII and Fla. Stat. Ch. 166 and Fla. Stat. §§163.3201, 163.3202 and 380.06(16).

(B) This subchapter shall apply to all lands in the city.

#### **SECTION 103.02 INTENT AND PURPOSE.**

(A) This subchapter is intended to implement and be consistent with the city comprehensive plan pursuant to Fla. Stat. §§163.3161 et seq., the Florida Local Government Comprehensive Planning and Land Development Regulation Act.

(B) This objective is accomplished by requiring all new impact generating land development activity to contribute its proportionate share of the funds, land, or public facilities/equipment necessary to accommodate any impacts on public park, police and fire facilities/equipment having a rational nexus to the proposed land development for which the need is reasonably attributable to the proposed development.

(C) This subchapter is intended to be consistent with the principles for allocating a fair share of the cost of new public facilities equipment to new users as established by the Florida Supreme Court in the case of *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

#### **SECTION 103.03 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUILDING PERMIT.** Any development permit issued by the Building Department of the city or any other city office before any building or construction activity can be initiated on a parcel of land.

**CAPITAL FIRE FACILITIES.** Fire facilities planning and any land, land improvements, building and fire equipment (vehicles and manpower equipment) and associated costs.

**CAPITAL PARK FACILITIES.** Park planning and any land, land improvements, building and park facilities/equipment costs.

**CAPITAL POLICE FACILITIES.** Police facilities planning and any land, land improvements, buildings and police equipment (patrol cars, furniture and manpower equipment) and associated costs.

**COMMENCEMENT OF LAND DEVELOPMENT.** Activity occurs upon any of the following events:

- (1) The approval of a development of regional impact.
- (2) The issuance of any permit to authorize building or construction of any kind on the property.
- (3) The issuance of any building permit.

**DEVELOPER.** Any person, corporation, partnership, association, trust, estate, business trust, agency, two (2) or more persons having a joint or common interest, governmental entity, or any other entity undertaking the development of land.

**EXISTING LAND DEVELOPMENT ACTIVITY.** The most intense use of land within the twelve (12) months prior to the time of commencing land development activity.

**FEE PAYER.** A developer commencing impact-generating land development activity who is obligated to pay an impact fee in accordance with the terms of this subchapter.

**GOVERNMENT PROPERTY.** Real property that is owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a Water Management District, a county, a municipality, a special district, or a school district.

**IMPACT-GENERATING LAND DEVELOPMENT ACTIVITY.** Land development that increases the demand on capital park, police or fire facilities/equipment.

**LAND.** The same meaning as set forth in Fla. Stat. §380.031.

**NONCOMMENCEMENT.** The cancellation of construction activity that is proposed to make a material change in a structure.

**PERSON.** An individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.

#### **SECTION 103.04 RULES OF CONSTRUCTION.**

In the construction of this subchapter, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out here shall not be applied to any section of this subchapter which contains any express provisions excluding such construction, or where the subject matter or content of such section would be inconsistent with this section.

(A) *Generally.* All provisions, terms, phrases and expressions contained in this subchapter shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this subchapter, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of this state for the same terms.

(B) *Text.* In case of any difference of meaning or implication between the text of this subchapter and any figure, the text shall control.

(C) *Delegation of authority.* Where there is a provision requiring the head of a department or some other city officer to perform some duty, it is to be construed to authorize that person to delegate professional-level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.

(D) *Gender.* Words of the masculine gender shall be construed to include the feminine and neuter.

(E) *Month.* A calendar month.

(F) *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(G) *Number.* A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.

(H) *Shall, may.* "Shall" is mandatory; "may" is permissive.

(I) *Tense.* Words used in the past or present tense include the future as well as the past or present.

(J) *Written or in writing.* The terms "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or otherwise.

(K) *Year.* A calendar year unless a fiscal year is indicated.

(L) *Boundaries.* Where a road right-of-way is used to define construction district boundaries, that portion of the road right-of-way demarcating the boundary shall be considered as part of the district it bounds.

#### **SECTION 103.05 FEE TO BE IMPOSED ON IMPACT GENERATING LAND DEVELOPMENT ACTIVITY.**

(A) *Fee obligation at commencement of land development activity; fee determined and paid at issuance of building permit.*

(1) After the effective date of this subchapter, any person who shall commence any impact-generating land development activity as herein defined shall be obligated to pay an impact fee upon the commencement of such land development activity. The fee shall be determined and paid to the city at the time of issuance of a building permit for the development. If the building permit is for less than the entire development, the fee shall be computed separately for the amount of development covered by the permit. If the fee is exacted for impact generating land development activity that increases impact because of a change or increase in use, the fee shall be determined by computing the difference in the

fee schedule between the new land development activity and the existing land development activity.

(2) Any developer who prior to the effective date of this subchapter agreed as a condition of development approval to pay impact fees, shall be responsible for the payment of the fees under the terms of such agreement and the payment of such fees by the developer will be offset against any impact fees otherwise due at later stages of the land development activity for which the fee was paid. Any portion of impact fees agreed to be paid pursuant to a prior agreement that is greater than the fee established in this subchapter shall be refunded.

(3) Any land or facilities agreed to be dedicated to the city as a condition of development approval shall be dedicated by either easement or deed, at the discretion of the City Manager, no later than the time of building permit issuance.

(B) *Fee agreement providing for payment of fee.* At any time prior to issuance of a building permit, the owner of property may enter into a fee agreement with the city providing for a credit or payment of the fee pursuant to the terms of this subchapter.

(C) *Establishment of fee schedule.*

(1) Any person who shall initiate any new impact-generating land development activity, except those preparing an individual assessment of fiscal impact or those receiving an interpretation of the impact of their proposed land development activity shall pay an impact. Impact fees shall be established by the City Council by resolution.

(2) The fees identified in the resolution shall be adjusted annually by the change reflected in the Implicit Price Deflator for State and Local Government Consumption Expenditures and Investment as prepared by the United States Department of Commerce from the previous year. The adjustment shall take effect October 1 each year.

(3) If a building permit is requested for mixed uses, then the fee shall be determined according to the impact fee schedule within the resolution by apportioning the space committed to uses specified on the schedule.

(4) Biannually, and at the same time the City Council reviews the budget and capital improvement element of the Palm Bay Comprehensive Plan, the City Manager shall recommend to the City Council whether any changes should be made to the impact fee schedule to reflect changes in the factors that

affect the fee schedule. The purpose of this review is to analyze the effects of inflation on the actual costs of facilities and to insure that the fee charged new impact generating land development activity will not exceed its pro rata share for the reasonably anticipated expansion costs of facilities necessitated by its presence.

(5) The fees identified in the impact fee schedule within the resolution shall be adjusted annually by the amount of change reflected in the Florida Department of Transportation Price Trends Index from the previous year. The adjustment shall take effect October 1 each year.

### **SECTION 103.06 INDIVIDUAL ASSESSMENT OF FISCAL IMPACT.**

(A) *General.*

(1) The impact fee shall be computed by the use of an individual assessment of fiscal impact if:

(a) The type of land development being commenced is not one of those types listed on the fee schedule in §102.05(C); or

(b) The feepayer chooses to have the amount of the fee determined by the use of an individual assessment of fiscal impact; or

(c) The city staff's analysis of the proposed land development activity concludes that the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to remediate than the amount of the fee that would be generated by the use of the fee schedule.

(2) The developer shall be responsible for preparation of the individual assessment of fiscal impact if the developer chooses to conduct the analysis. The City Manager shall be responsible for preparation of the individual assessment of fiscal impact if the type of land development being proposed is interpreted not to be one of those types listed in the fee schedule or analysis of the proposed land development activity concludes that the nature, timing or location of the proposed development make it likely to generate impacts costing substantially more than the amount of the fee generated by the use of the fee schedule. The person who prepares the individual assessment of fiscal impact shall be a qualified professional in the preparation of impact analysis and shall be approved by the City Manager on the basis of professional training and experience. If the City Manager is responsible for preparation of the assessment, the City Manager may request the developer to prepare the individual assessment of fiscal impact, and credit the cost for such preparation against the impact fee.

(B) *Park Component.* The individual assessment of fiscal impact for the park component shall determine if the proposed land development activity is designed or located so that the occupants of the development will use capital park facilities less than that projected in the park component.

(C) *Police Component.* The individual assessment of fiscal impact for the police component shall determine if the proposed land development activity is designed or located so that the development will not demand the use of capital police facilities from that projected in the police component.

(D) *Fire Component.* The individual assessment of fiscal impact for the fire component shall determine if the proposed land development activity is designed or located so that the development will not demand the use of capital fire facilities other than that projected in the fire component.

(E) *Procedure for review of application for assessment of fiscal impact.*

(1) An individual assessment of fiscal impact shall be undertaken through the submission of an application of assessment of fiscal impact for the facility component for which an assessment is requested. A developer may submit such an application at his discretion. The city shall submit such an application for any proposed land development activity interpreted as not one of those types listed on the fee schedule, and for any proposed land development activity for which it concludes the nature, timing, or location of the proposed development make it likely to generate impacts costing substantially more to remediate than the amount of the fee that would be generated by the use of the fee schedule.

(2) Within twenty (20) days of receipt of an application of assessment of fiscal impact, the City Manager shall determine if the application is complete. If the City Manager determines that the application is not complete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. The application shall be deemed complete if no deficiencies are specified. The City Manager shall take no further action on the application until it is deemed complete.

(3) When the City Manager determines the application is complete, a written decision shall be rendered in thirty (30) days on whether the fee should be modified, and if so, what the amount should be.

(4) If on the basis of generally recognized principles of impact analysis it is determined the data, information and assumptions used by the applicant to calculate the assessment of fiscal impact for either the park, police or fire component satisfies the requirements of this section, the fee determined in the

assessment of fiscal impact shall be deemed the fee due and owing for the proposed land development activity. The adjustment shall be set forth in a fee agreement which shall be entered into pursuant to §102.05(B).

(F) *Appeal of decision on application of assessment of fiscal impact.* Any person may appeal the City Manager's decision on the applicant's application for assessment of fiscal impact, or on an application for assessment of fiscal impact initiated by the city staff on any proposed land development activity, by filing a petition with the City Council. In reviewing the City Manager's decision, the City Council shall make written findings of fact and conclusions of law and use the standards established in divisions (B) through (D) above, whichever is applicable.

#### **SECTION 103.07 CREDITS; EXEMPTIONS.**

(A) *General.*

(1) Any person who shall initiate any impact-generating land development activity may apply for a credit against any fee for capital park, police or fire facility impacts proposed to be paid pursuant to the provisions of this subchapter for any contribution, payment, construction, or dedication of land accepted and received by the city for capital park, police or fire facilities, as defined in §102.03, including any contribution, payment, construction or dedication made pursuant to a development order issued by the city pursuant to its local development regulations, Fla. Stat. §380.06, or any additional development requirement imposed by the Florida Land and Water Adjudicatory Commission on a development of regional impact.

(2) Credit for contributions, payments, construction or dedications of an impact fee component shall not be transferable to another component. Credit shall be transferable within the same component and within the same development. No credit shall be greater than the fee imposed for the land development.

(B) *Credit for Park Component.* For any credit against any park fee proposed to be paid, the contribution, payment, construction or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment, construction or dedication for a capital park facility identified as part of the parks and open space element of the Palm Bay Comprehensive Plan and determined by the city to be needed for expansion of its park capital facilities.

(C) *Credit for Police Component.* For any credit against any police fee to be paid, the contribution, payment, construction or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment,

construction or dedication for any capital police facility or land identified as part of police facilities fiscal impact report.

(D) *Credit for Fire Component.* For any credit against any fire fee to be paid, the contribution, payment, construction, or dedication shall be credited for one hundred percent (100%) of the fair market value for any contribution, payment, construction or dedication for capital fire facilities identified as part of fire facilities fiscal impact report.

(E) *Procedures for review of application for credit agreement.*

(1) The determination of any credit shall be undertaken through the submission of an application for credit agreement, which shall be submitted to the City Manager. The application for credit agreement shall include the following information:

(a) If the proposed application for credit agreement involves credit for the dedication of land:

1. A drawing and legal description of the land;
2. The appraised fair market value of the land at the date a building permit is proposed to be issued for the impact generating land development activity, prepared by a professional real estate appraiser who is a member of the Member Appraisal Institute (MAI) or who is a member of Senior Residential Appraisers (SRA); and if applicable,
3. A certified copy of the development order in which the land was agreed to be dedicated.

(b) If the proposed application for credit agreement involves construction:

1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed Florida engineer or contractor for the proposed construction;
2. The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other

expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.

(c) If the proposed application for credit agreement involves a credit for any other contribution or payment:

1. A certified copy of the development order in which the contribution or payment was agreed;

2. If payment has been made, proof of payment; or

3. If payment has not been made, the proposed method of payment.

(2) Within twenty (20) days of receipt of the proposed application for credit agreement, the city manager shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the City Manager shall send a written statement to the applicant outlining the deficiencies. The City Manager shall take no further action on the proposed application for credit agreement until all deficiencies have been corrected or otherwise settled.

(3) Once the City Manager determines the proposed application for credit agreement is complete, proposed credit shall be granted within twenty (20) days if it meets the standards set forth in section §102.08(B) through (F), whichever is applicable.

(4) If the application for credit agreement is approved by the City Manager, a credit agreement shall be prepared and signed by the applicant and the city. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extension thereof, and the dollar credit the applicant shall receive for the contribution, payment, or construction.

(F) Appeal of application for credit agreement. Any person may appeal the City Manager's decision on the application for credit agreement by filing a petition with the City Council within thirty (30) days of a decision. In reviewing the City Manager's decision, the City Council shall use the standards established in divisions (B) through (D) above, whichever is applicable.

(G) No police, park, or fire impact fee shall be imposed, charged, or assessed on Government Property. However, any impact fee exemption issued for Government Property shall expire if the property ceases to meet the definition of "Government Property" contained in this Chapter.

#### **SECTION 103.08 USE OF FUNDS.**

(A) *Intent.* Any fees collected under this subchapter are expressly designated for the accommodation of impacts reasonably attributable to the proposed development as hereinafter provided in this section.

(B) *Establishment of trust fund and trust accounts.* The Palm Bay Impact Fee Trust Fund is established for the purpose of insuring that the fees collected pursuant to this subchapter are designated for the accommodation of impacts reasonably attributable to the proposed land development activity. The impact fee trust fund shall be divided into three (3) trust accounts, one (1) for the park component, one (1) for the police component and one (1) for the fire component.

(C) *Expenditure of fees in trust accounts.*

(1) Park impact component.

(a) Proceeds collected from the community park impact component of the fee and all interest accrued on such funds shall be used for capital park facilities, within the city. In locating and constructing park capital facilities, the city shall be guided by the standards of the Palm Bay Comprehensive Plan.

(b) Proceeds collected from the urban district impact component of the fee and all interest accrued on such funds shall be used for urban district park capital facilities within the city.

(2) Police impact component. Proceeds collected from the police impact component of the fee and all interest accrued on such funds shall be used for police capital facilities within the city.

(3) Fire impact component. Proceeds collected from the fire impact component of the fee and all interest accrued on such funds shall be used for fire capital facilities within the city.

(4) Proceeds collected from the parks, police and fire impact component of the fee and all interest accrued on such funds may also be used for periodic engineering and planning studies to update the fee structure as may be required from time to time.

(D) *Investment of fees in interest bearing accounts.* Any proceeds in each of the trust accounts on deposit, not immediately necessary for expenditure, shall be invested in interest bearing assets. All income derived from these investments shall be retained in the applicable trust account.

(E) *Annual recommendation for expenditure of fees.* At least once each year the City Manager or his designee shall propose appropriations to be spent

from the individual trust accounts to the City Council. After review of the City Manager's recommendation, the City Council shall either approve, modify, or deny the recommended expenditures of the trust account monies. Any amounts not appropriated from the trust accounts together with any interest earnings shall be carried over in the specific trust account to the following fiscal period.

(F) *Return of fees if not spent for capital improvements.*

(1) Any fees collected shall be returned to the feepayer or his successor in interest if the fees have not been spent within seven (7) years from the date the building permit for the development was issued, along with interest of six (6%) percent a year. Provided, however, that the City Council may by resolution extend for up to three (3) years the date at which fees must be refunded. Such an extension shall be made upon a finding that within such three (3) year period, specific capital improvements are planned and evidenced by the adoption and incorporation into the city's comprehensive plan, that these capital improvements shall be constructed within the next three (3) years, that these improvements are reasonably attributable to the feepayer's land development activity, and that the fees whose time of refund is extended shall be spent for these capital improvements. Fees shall be deemed to be spent on the basis of the first fee collected shall be the first fee spent.

(2) The refund of fees shall be undertaken through the following process:

(a) A refund application shall be submitted within one (1) year following the end of the sixth year from the date on which the building permit was issued on the proposed development. If the time of refund has been extended pursuant to this division (F), the refund application shall be submitted within one (1) year following the end of this extension.

(b) The refund application shall include the following information:

1. A copy of the dated receipt issued for payment of the fee;
2. A copy of the building permit;
3. A copy of the receipt issued by the City Council for payment of the fee; and if applicable,
4. Evidence that the applicant is the successor in interest to the feepayer.

(3) Within thirty (30) days of receipt of the refund application, the City Manager shall determine if it is complete. If the City Manager determines the application is not complete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. Unless the deficiencies are corrected, the City Manager shall take no further action on the refund application.

(4) When the City Manager determines the refund application is complete, the refund shall be approved within thirty (30) days if it is determined the feepayer or any successor in interest has paid a fee that the city has not spent within the period of time permitted under this section. The refund shall include the fee paid plus interest of six (6%) percent a year.

(5) Any feepayer, or any successor in interest, may appeal the decision of a refund application by filing a petition with the City Council within thirty (30) days of the decision. In reviewing the City Manager's decision, the City Council shall use the standards established in division (1) above.

**SECTION 103.09 LIBERAL CONSTRUCTION; SEVERABILITY; VIOLATIONS.**

(A) The provisions of this subchapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare, and convenience.

(B) If any section, phrase, sentence, or portion of this subchapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions.

(C) A violation of this subchapter shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, the city shall have the power to either sue in civil court to enforce the provisions of this subchapter, or initiate proceedings before the City Code Enforcement Special Magistrate to enforce compliance.<<"

**SECTION 2.** The City of Palm Bay Code of Ordinances is hereby amended by creating Title X, Impact Fees, Chapter 103, Impact Fees, Subchapter 'Transportation Facilities Impact Fees', which shall henceforth read as follows:

**">TRANSPORTATION FACILITIES IMPACT FEE**

**SECTION 104.01 AUTHORITY, APPLICABILITY.**

(A) The City Council has the authority to adopt this subchapter pursuant to Fla. Const. Art VIII, Fla. Stat. Ch. 166 and Fla. Stat. §§163.3201, 163.3202, and 380.06(16).

(B) This subchapter shall apply to all lands within the municipal boundaries of the city.

#### **SECTION 104.02 INTENT AND PURPOSE.**

(A) Planning for the necessary capacity expansion of the city's major transportation system to ensure the safety and efficiency of the city's roads and to provide for the health, safety, welfare, and economic well-being of the citizens of the city is the mandated responsibility of the city pursuant to Fla. Stat. §§163.3161 *et seq.*, the Florida Local Government Comprehensive Planning and Land Development Regulation Act, and Fla. Stat. §§166.011 *et seq.*, the Municipal Home Rule Powers Act.

(B) This subchapter is intended to implement and be consistent with the city comprehensive plan adopted pursuant to Fla. Stat. §§163.3161 *et seq.*, the Florida Local Government Comprehensive Planning and Land Development Regulation Act.

(C) This objective is accomplished by requiring all new land development activity generating traffic that places additional demand on the major transportation system to contribute its proportionate share of the funds, land, or public facilities to accommodate any transportation impacts having a rational nexus to the proposed development and for which the need is reasonably attributable to the proposed development.

(D) It is not the purpose of this subchapter for the city to collect any funds, land or public facilities from new land development activity generating traffic in excess of the actual amount necessary to offset the increased demand on the major transportation system generated by the new land development activity generating traffic. This subchapter is intended to be consistent with the principles for allocating a fair share of the cost of the new public facilities to new users as established in *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 324 So. 2d 314 (Fla. 1976), and *Homebuilders and Contractors Association of Palm Beach County v. Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

#### **SECTION 104.03 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ARTERIAL ROAD.** A road as defined in the future traffic-circulation map of the city's comprehensive plan.

**BUILDING PERMIT.** Any development permit issued by the City Building Division or any other city office before any building or construction activity can be initiated on a parcel of land.

**CAPITAL IMPROVEMENTS.** The outlay of capital dollars for the planning of, engineering for, acquisition of land for, and construction of roads, turn lanes, intersection improvements and signalization, but does not include maintenance.

**CERTIFICATE OF OCCUPANCY (CO).** A written permission to occupy a structure granted by the Building Official. In the case of land development activity generating traffic not requiring a building permit, a certificate of completion or other final written approval shall substitute for the certificate of occupancy.

**COLLECTOR ROAD.** A road as defined in the future traffic-circulation map of the city's comprehensive plan.

**COMMENCEMENT OF LAND DEVELOPMENT ACTIVITY.** The date of the issuance of any building permit.

**DEVELOPER.** Any person, corporation partnership, association, trust, estate, business trust, agency, two (2) or more persons having a joint or common interest, governmental entity, or any other entity undertaking the development of land.

**EXISTING LAND DEVELOPMENT ACTIVITY.** The most intense use of land within the twelve (12) months prior to the time of commencing land development activity generating traffic.

**FAIR SHARE TRANSPORTATION FACILITIES IMPACT FEE or IMPACT FEE.** The fee required to be paid in accordance with the terms of this subchapter.

**FEEPAVER.** A developer commencing land development activity generating traffic that places additional demand on the major transportation system and who is obligated to pay a fair share transportation facilities impact fee in accordance with the terms of this subchapter.

**IMPACT FEE PAYMENT AGREEMENT.** An agreement between the Developer and the City that defines the terms under which the City may accept deferred payment of impact fees. The City may charge a fee for this service as may be adopted by Resolution of the City Council. The agreement will be recorded at the Developer's expense and will include sufficient security to ensure payment

of the impact fees. The City Manager is authorized to negotiate and execute the agreement.

**LAND.** The earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

**LAND DEVELOPMENT ACTIVITY GENERATING TRAFFIC.** The carrying out of any building activity or the making of any material change in the use of any structure or land that attracts or produces vehicular trip(s) over and above that produced by the existing land development activity, and consequently places an additional demand on the major transportation system.

**LEVEL OF SERVICE.** A qualitative measure that represents the collective factors of speed, travel time, traffic interruption, freedom to maneuver, safety, driving comfort and convenience, and operating costs provided by a highway facility under a particular volume condition. Levels of service vary from A to F. "Level of service C" shall mean a roadway condition as determined and established by the 2002 Quality/Level of Service (QLOS) Handbook as updated on August 21, 2007, Florida Department of Transportation.

**LOCAL ROAD.** A road designated and maintained primarily to provide access to abutting property. A local road is of limited continuity and is not for through traffic. A local road is not considered as part of the major transportation system.

**MAJOR TRANSPORTATION SYSTEM.** All arterial and collector roads, intersections, and multi-modal transportation facilities within the City, and those providing significant service to the City, including proposed arterial and collector roads and multi-modal transportation facilities necessitated by new land development activity generating traffic.

**MIXED USE LAND DEVELOPMENT ACTIVITY.** Land development activity that includes a combination of non-residential and multi-family residential uses in a single building.

**MULTI-FAMILY LAND DEVELOPMENT ACTIVITY.** Residential land development activity that provides four (4) or more residential units in one (1) building. This includes facilities such as nursing homes, adult-congregate living facilities, apartment complexes and condominium complexes.

**MULTI-MODAL TRANSPORTATION FACILITIES.** Includes bike paths, sidewalks, transit and other transportation facilities that will provide alternative transportation capacity.

**NONCOMMENCEMENT.** The cancellation of construction activity that is proposed to make a material change in a structure or land.

**NON-RESIDENTIAL LAND DEVELOPMENT ACTIVITY.** All land development activity that specifically excludes any residential uses.

**PERSON.** An individual, developer, corporation, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.

**SHOPPING CENTER.** For the purpose of calculating the traffic impact fee for shopping centers, a shopping center use is defined to include restaurants, such that there is no differential traffic impact fee for restaurant uses locating in shopping centers. This definition does not apply to freestanding restaurant buildings.

#### **SECTION 104.04 RULES OF CONSTRUCTION.**

In the construction of this subchapter, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out herein shall not be applied to any section of this subchapter which contains any express provisions excluding such construction or where the subject matter or content of such section would be inconsistent with this section.

(A) *Generally.* All provisions, terms, phrases, and expressions contained in this subchapter shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. Terms used in this subchapter, unless otherwise specifically provided, shall have the meanings prescribed by the Florida Statutes for the same terms.

(B) *Text.* In case of any difference of meaning or implication between the text of this subchapter and any figure, the text shall control.

(C) *Delegation of authority.* Where there is a provision requiring the head of a department or some other city officer to do some act or to perform some duty, it is to be construed to authorize that person to delegate professional level subordinates to perform the duty, unless the terms of the provision or section specify otherwise.

(D) *Gender.* Words of the masculine gender shall be construed to include the feminine and vice versa.

(E) *Month.* A calendar month.

(F) *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but

technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(G) *Number.* A word of the singular number only, may extend and be applied to several persons and things as well as to one (1) person and thing. The use of the plural number shall be deemed to include any single person or thing.

(H) *Shall, may.* "Shall" is mandatory; "may" is permissive.

(I) *Tense.* Words used in the past tense include the future as well as the past or present.

(J) *Written or in writing.* Any representation of words, letters or figures whether by printing or otherwise.

(K) *Year.* A calendar year unless a fiscal year is indicated.

#### **SECTION 104.05 FEE TO BE IMPOSED ON LAND DEVELOPMENT ACTIVITY GENERATING TRAFFIC.**

(A) *Fee determined and paid at issuance of building permit.*

(1) After the effective date of this subchapter, any person who shall commence any land development activity generating traffic that creates an increased demand on the major road network system shall be obligated to pay a fair share transportation facilities impact fee upon the commencement of such land development activity generating traffic in the manner and the amount set forth herein. The impact fee shall be determined and paid to the city at the time of issuance of a building permit for the development unless otherwise provided herein. No building permit shall be final until any applicable impact fee has been paid and the development complies with all provisions of this code of ordinances. If the building permit is for less than the entire development, the impact fee shall be computed separately for the amount of development covered by the building permit. The obligation to pay the impact fee shall run with the land. If the impact fee is due to be paid for land development activity generating traffic that increases the impact because of a change or increase in use, the impact fee shall be determined by computing the difference in the fee schedule between the new land development activity generating traffic and the existing land development activity.

(a) *Agreement in lieu of payment.*

1. In lieu of payment at the time of issuance of the building permit, non-residential, mixed use and multi-family land development activity may defer payment until the time of the certificate of occupancy, providing such

payment is guaranteed through the execution of an Impact Fee Payment Agreement. In this case, the City will not issue the Certificate of Occupancy until the impact fee due has been paid.

2. The Developer shall be required to pay the impact fee rates applicable at the time the payment is made.

(b) *Shell Building*. In those instances where a Developer has constructed a non-residential shell building, the payment may be deferred until the time of occupancy or three (3) years from the date of the Certificate of Occupancy, whichever comes first, providing such payment is guaranteed through the execution of an Impact Fee Payment Agreement.

(c) *Economic development incentives*. The City Council may, by Resolution, establish criteria for impact fee mitigation.

(d) *Early payment*. Payments made in full prior to issuance of a building permit may be made. Such payment amount shall be calculated based on the applicable fees effective at the time of payment. Fee increases following such payment shall not be retroactive for the project paying such fees. Any differential due at building permit issuance because of change in use or size of the project shall be calculated at the time of permit issuance. Such early payments are not subject to refund but may be credited to the land for a future project.

(2) Any developer who, prior to the effective date of this subchapter, agreed as a condition of development approval to pay city transportation impact fees, shall be responsible for the payment of the impact fees under the terms of such agreement, and the payment of such impact fees by the developer to the city will be offset against any transportation impact fees otherwise due at later stages of the land development activity for which the impact fee was paid. Any portion of transportation impact fees agreed to be paid to the city pursuant to a prior agreement that are greater than the impact fee established in this subchapter shall be refunded.

(3) Any traffic-related land agreed to be dedicated to the city as a condition of development approval shall be dedicated by either easement deed or warranty deed, at the option of the city, no later than the time of building permit issuance, and shall be eligible for a credit in accordance with the provisions of §103.07.

(B) *Fee agreement providing for credit towards the payment of fee*. At any time prior to issuance of a building permit, the developer may enter into a fee

agreement with the city providing for a credit towards the payment of the impact fee pursuant to the terms of this chapter.

(C) *Establishment of fee schedule.*

(1) Any developer who is issued a building permit, except those preparing an individual traffic impact analyses of their proposed land development activity, shall pay an impact fee. Impact fees shall be established by the City Council by resolution.

(2) Biannually, and at the same time the City Council reviews the budget and capital improvement element of the city comprehensive plan, the City Manager or his designee shall recommend to the City Council whether any changes should be made to the impact fee schedule to reflect changes in the factors that affect the impact fee schedule. The purpose of this review is to insure that the impact fee charged of new land development activity generating traffic will not exceed its pro rata share for the reasonably anticipated expansion costs of transportation facilities necessitated by its presence.

(3) The fees identified in the impact fee schedule within the resolution shall be adjusted annually by the amount of change reflected in the Florida Department of Transportation Price Trends Index from the previous year. The adjustment shall take effect October 1 each year.

**SECTION 104.06 INDIVIDUAL TRAFFIC IMPACT ANALYSIS.**

(A) *General.*

(1) The impact fee shall be computed by the use of an individual traffic impact analysis of land development activity generating traffic on the major road network system, if:

(a) The type of land development being commenced is not one of those types listed on the impact fee scheduled in §103.05(C); or

(b) The feepayer chooses to have the amount of the impact fee determined by the use of an individual traffic impact analysis; or

(c) The city's analysis concludes that the proposed development is likely to generate impacts costing more to remediate than the amount of the impact fee established by the impact fee schedule.

(2) The developer shall be responsible to prepare the individual traffic impact analysis if the developer chooses to conduct the analysis. The city shall prepare the individual traffic impact analysis if the proposed development is interpreted not to be one listed in the impact fee schedule or if the analysis of the

proposed development concludes that it is likely to generate impacts costing substantially more than the amount of the impact fee established by the impact fee schedule. The person who prepares such analysis shall be a qualified professional in the preparation of impact analysis and shall be approved by the City Manager or his designee on the basis of professional training and experience. If the city is responsible to prepare the individual traffic impact analysis, it may require the developer to prepare it and credit the cost of such preparation against the impact fee. If the city pays such cost, it shall be deducted from the cost of the developer's impact fee.

(B) *Procedure for review of application for traffic impact analyses.*

(1) The individual traffic impact analysis shall be undertaken through the submission of an application of traffic impact analysis which shall include the following information:

(a) The projected trip generation rates for the proposed land development activity. Trip generation rates shall be assessed on an average daily trip. The trip generation rates shall be based upon either local empirical surveys of trip generation rates for the same or similar land use types or state or national trip generation rate information, if applicable; and

(b) The proposed trip length of the trips generated from the proposed land development activity onto the major road network system. Trip length information shall be based upon local empirical surveys of similar land use types or trip length data compiled by the City Manager or his designee for average trip length for similar land use types; and

(c) The proposed percentage of new trips on the major road network system which are generated by the proposed land development activity. The percentage of new trips shall be based upon local empirical surveys of similar land use types or state or national percentage of new trips information if applicable or other reliable percentage of new trips information acceptable to the City Manager, if applicable; and

(d) An assessment of the capital expansion of the major road network system necessitated by the proposed land development activity if it is to be maintained at level of service C on an average annual basis. Practices and methodological procedures generally accepted in the transportation planning and engineering profession acceptable by the City Manager or his designee shall be used to determine the capital expansion of the major road network system necessitated by the proposed land development activity; and

(e) An assessment of the costs for providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in the city for the construction of a lane mile and shall include related right-of-way costs, and the planning, design, and engineering costs for the necessary capital improvements; and

(f) An assessment of the projected gas and license tax revenues or any other revenues that will be derived from the proposed land development activity that can be reasonably determined to be available to pay for new capital improvements to the major road network system over the planning horizon; and

(g) The amount of any shortfall between the projected gas, license tax, any other revenues, and the capital expansion costs for the major road network system necessitated by the new land development activity generating traffic. Any shortfall shall be considered the proposed fair share transportation facilities impact fee for the proposed land development activity.

(2) Within twenty (20) days of receipt of an application of traffic impact analysis or a revised application, the City Manager or designee shall determine if it is complete. If the City Manager or designee determines that an application or revised application is not complete, they shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the City Manager or designee shall take no further action on the traffic impact analysis.

(3) When the City Manager or his designee determines the application is complete, within thirty (30) days he shall review it and render a written report indicating whether the fee stated in §103.05(C) is to be varied to accommodate the activity generated by the proposed development.

(4) If, on the basis of generally accepted principles of traffic engineering, it is determined in the traffic impact analysis that the city's cost to accommodate the proposed land development activity is substantially different than the fee stated in §103.05(C), the amount of the fair share transportation facilities impact fee shall be varied from that established in the impact fee schedule to an amount consistent with the amount determined in the traffic impact analysis.

(C) *Appeal of decision on application of traffic impact analysis.* Any developer submitting an application for traffic impact analysis may appeal the City Manager's findings in the report submitted pursuant to subsection (B)(3) above, by filing a petition together with a Thirty (\$30.00) Dollar application fee with the City

Council within thirty (30) days of the decision by the City Manager. In reviewing the City Manager's findings, the City Council shall, at a public hearing held within sixty (60) days from the date of the application, make written findings of fact and conclusions of law based upon the standards established in subsection (B) above.

**SECTION 104.07 CREDITS.**

(A) *General.*

(1) A developer who shall commence any land development activity generating traffic may apply for a credit against any impact fee paid pursuant to the provisions of this subchapter for any transportation related contribution, payment, construction, or land accepted and received by the city, including any other transportation related contribution, payment or construction made to the city pursuant to a development order issued by the city pursuant to its local land development regulations or Fla. Stat. §380.06, or any additional development requirement imposed by the Florida Land and Water Adjudicatory Commission on a development of regional impact.

(2) The credit shall be in an amount equal to the market value of the contribution, payment, construction, or land at the time of the contribution, payment, construction, or land dedication. No credit shall exceed the impact fee for the proposed land development activity generating traffic imposed by this chapter.

(B) *Procedures for review of application for credit agreement.*

(1) The determination of any credit shall be undertaken through the submission of an application-for-credit agreement, which shall be submitted to the City Manager or designee. The application-for-credit agreement shall include the following information:

(a) If the proposed application-for-credit agreement involves credit for the dedication of land:

1. A drawing and legal description of the land;
2. The appraised fair market value of the land at the date a building permit is proposed to be issued for the land development activity generating traffic prepared by a professional real estate appraiser who is a member of the member appraisal institute (MAI) or who is a member of senior residential appraisers (SRA); and, if applicable
3. A certified copy of the development order to which the land was agreed to be dedicated.

(b) If the proposed application-for-credit agreement involves construction:

1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed state engineer or contractor for the proposed construction.

2. The projected costs for the suggested improvement which shall be based on local information for similar improvements along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other expenses necessary or incidental to determining the feasibility or practicability of such construction or reconstruction.

(c) If the proposed application-for- credit agreement involves a credit for any other contribution or payment:

1. A certified copy of the development order in which the contribution or payment was agreed;

2. If payment has been made, proof of payment; or

3. If payment has not been made, the proposed method of payment.

(2) Within twenty (20) days of receipt of the proposed application or revised application for credit agreement, the City Manager or designee shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the City Manager or designee shall send a written statement to the applicant outlining the deficiencies. The City Manager or designee shall take no further action on the proposed or revised application-for-credit agreement until all deficiencies have been corrected or otherwise settled.

(3) Once the City Manager or designee determines the proposed credit agreement is complete, they shall review it within thirty (30) days and grant the proposed credit agreement if the traffic related contribution, payment, construction or land dedication:

(a) Meets an expansion need of the capital road improvements to the major road network system identified in Exhibit A which is attached to Ordinance 91-10 and incorporated herein by reference;

(b) Provides a capital road improvement to the major road network system which provides capacity expansion necessitated by the proposed land development activity.

Credit shall be given for the contribution, payment, construction or land that is consistent with its market value at the time of contribution, payment or dedication.

(4) If an application-for-credit agreement is approved by the City Manager or designee, a credit agreement shall be prepared and signed by the applicant and the city. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extensions thereof, and the dollar credit the applicant shall receive for the contribution, payment, or construction.

(C) *Appeal of application for credit agreement.* An applicant for credit may appeal the City Manager's decision on the application-for-credit agreement by filing a petition with the City Council within thirty (30) days of the date of the decision of the City Manager on such application. In reviewing the City Manager's decision, the City Council shall use the standards established in subsection (B) above. Such review shall be conducted by the City Council at a public hearing and shall be heard by the City Council within sixty (60) days from the date of the filing of the petition.

#### **SECTION 104.08 IMPACT FEE DISTRICT.**

There is established one (1) impact fee district which encompasses and is equal to the municipal boundaries of the city.

#### **SECTION 104.09 USE OF FUNDS.**

(A) *Intent.* Any impact fees collected under this chapter are expressly designated for the accommodation of impacts reasonably attributable to the increased demand of proposed land development activity generating traffic as hereinafter provided in this section.

(B) *Administrative costs.* The city shall be entitled to actual administrative costs not to exceed two percent (2%) of the funds collected as compensation for the administrative expense of collecting and administering these impact fee regulations. All remaining funds collected from impact fees shall be deposited into the fair share transportation facilities impact fee trust fund.

(C) *Establishment of trust fund.* There is established the Palm Bay Fair Share Transportation Facilities Impact Fee Trust Fund for the purpose of insuring that the impact fees collected pursuant to this subchapter are designated for the

accommodation of impacts reasonably attributable to the proposed land development activity generating traffic.

(D) *Expenditure of fees in trust fund.* Proceeds from the trust fund and interest accrued on such fund shall be used for capital expansion of the major road network system and in a manner consistent with the city comprehensive plan. Proceeds collected from the trust fund and all interest accrued on such funds may also be used for periodic engineering and planning studies to update the fee structure as may be required from time to time.

(E) *Investment of fees in interest bearing accounts.* Any funds in the trust fund on deposit, not immediately necessary for expenditure, shall be invested in interest bearing accounts. All income derived from these investments shall be retained in the trust fund. These monies shall be utilized for the capital expansion of the major road network system.

(F) *Annual recommendation for expenditure of fees.* At least once a year, at the time the annual city budget is reviewed, the City Manager shall propose to the City Council appropriations to be spent from the trust fund. After review of the City Manager's recommendation, the City Council shall either approve, modify, or deny the recommended expenditures of the trust fund monies for road improvements. Any amounts not appropriated from the trust fund together with any interest earnings shall be carried over in the trust fund to the next review period.

(G) *Return of fees if not spent for capital improvements.*

(1) Any impact fees collected shall be returned to the feepayer or his successor in interest if the impact fees have not been spent within seven (7) years from the date the building permit for the development was issued, along with interest of six (6%) percent a year; except that the city shall retain three (3%) percent of the fee to offset the costs of refunding. The City Council may, by resolution, extend for up to three (3) years the date at which fees must be refunded. Such an extension shall be made upon a finding that within such three (3) year period, specific capital improvements are planned and evidenced by the adoption and incorporation into the city's comprehensive plan that these capital improvements shall be constructed within the next three (3) years, that these improvements are reasonably attributable to the feepayer's land development activity generating traffic, and that the impact fees which time of refund is extended shall be spent for these capital improvements. Impact fees shall be deemed to be spent on the basis of the first impact fee collected shall be the first impact fee spent. The refund of impact fees shall be undertaken through the following process:

(a) A refund application shall be submitted within one (1) year following the end of the seven (7) years from the date on which the building permit was issued on the proposed development. If the time of refund has been extended pursuant to division (1) above, the refund application shall be submitted within one (1) year following the end of this extension.

(b) The refund application shall include the following information:

1. A copy of the dated receipt issued for payment of the fee;
2. A copy of the building permit; and, if applicable;
3. Evidence that the applicant is the successor in interest to the feepayer.

(2) Within thirty (30) days of receipt of the refund application, the City Manager or designee shall determine if it is complete. If the City Manager or designee determines the application is not complete, a written statement specifying the deficiencies shall be mailed to the person submitting the application. Unless the deficiencies are corrected, the City Manager or designee shall take no further action on the refund application.

(3) When the City Manager or designee determines the refund application is complete, the refund shall be approved within thirty (30) days if it is determined the feepayer or any successor in interest has paid an impact fee that the city has not spent within the period of time permitted under this section. The refund shall include the impact fee paid plus interest of six (6%) percent a year less the three (3%) percent administrative fee.

(4) Any feepayer or any successor in interest may appeal the decision of a refund application by filing a petition with the City Council within thirty (30) days of the decision. In reviewing the City Manager's decision, the City Council shall use the standards established in subsection (1)(a) above.

(H) *Refund of impact fees paid upon non-commencement of development activity.*

(1) Any impact fees collected shall be returned to the feepayer or his successor in interest if the developer so requests and upon cancellation of all building permits. Such refund shall not include interest earned and a three (3%) percent administrative fee shall be retained by the City. Impact fees may be refunded for a period up to two (2) years from payment date. After that period, no refunds can be requested.

**SECTION 104.10 LIBERAL CONSTRUCTION; SEVERABILITY; VIOLATIONS.**

(A) The provisions of this subchapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare, and convenience.

(B) If any section, phrase, sentence, or portion of this subchapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion.

(C) A violation of this subchapter shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, the city shall have the power to either sue in civil court to enforce the provisions of this subchapter or initiate proceedings before the City Code Enforcement Special Magistrate to enforce compliance.<<”

**SECTION 3.** The City of Palm Bay Code of Ordinances is hereby amended by creating Title X, Impact Fees, Chapter 103, Impact Fees, Subchapter ‘Water and Wastewater Impact Fees’, which shall henceforth read as follows:

**“>WATER AND WASTEWATER IMPACT FEES**

**SECTION 105.01 WATER AND WASTEWATER IMPACT FEES.**

(A) *Adoption.* The City hereby adopts and establishes pursuant to general law, a water capital charge, and a wastewater capital charge as set forth in paragraph (1) herein below, the purpose of which will be to finance capital expenditures and the payment of City indebtedness associated with the expansion of the City’s water supply, treatment and transmission system, the wastewater transmission, treatment, and effluent disposal system, and the reclaimed treatment and transmission system.

(1) *Implementation.* The amount of each capital charge per equivalent residential connection (ERC) shall be effective January 1, 2021, as follows:

<b>Date</b>	<b>Water Capital Charge</b>	<b>Wastewater Capital Charge</b>
Jan. 1, 2021	\$2,049.00	\$3,300.00

(B) *Applicability.* Except for those customers who have previously paid plant capacity charges to the previous owner of the utility and having previously been connected to the System, the capital charges set forth herein shall be paid

by those new customers who (1) connect to said System, (2) request service from the City, or (3) request an increase in water or wastewater service capacity. The City may exempt any customer from the payment of all or a portion of the water and wastewater capital charges to the extent that the City accepts a permanent contribution in aid of construction related to the water supply, treatment or transmission facilities or the wastewater transmission, treatment, or effluent disposal facilities having a value of not less than the portion of the water or wastewater capital charges being exempted.

(C) *Time of payment.* All water and wastewater capital charges shall be paid prior to connection of a structure or structures to be served by the City, or such other time as may be specifically provided by City resolution, by City ordinance, by agreement, or permit; provided, however, that the City may permit installment payments for owners of existing single-family residences where utility services are available for any water, or waste-water capital charges, and main line extension charges upon such terms and conditions as the City deems appropriate. Installment payments shall be paid in accordance with an Installment Payment Agreement approved by the City and such Installment Payment Agreement shall be and constitute a lien against the premises and shall become effective and binding as a lien from the date the owner of the property and the City enter into the said Installment Payment Agreement, such lien shall remain a lien co-equal with the lien of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid and shall bear interest annually at a rate not to exceed the legal rate allowed for such liens and may be foreclosed pursuant to the procedure set forth in Fla. Stat. Chapter 173. Furthermore, the balance due on any such installment agreement shall become immediately due and payable upon the sale or transfer of interest of the property by the Customer to any other person or entity or upon refinancing of the property. For the purposes of this chapter, transfer of interest shall be defined as set forth in any Installment Payment Agreement entered into pursuant to this chapter.

(1) When the utility applicant is not required to obtain a State of Florida Department of Environmental Protection permit to connect proposed water, wastewater, or reuse water treatment or transmission facilities to the City's utility system, all utility charges and fees shall be paid at or before the time of application for water, wastewater, or reuse service.

(2) When the applicant must obtain a Florida Department of Environmental Protection permit to connect proposed facilities to the utility system for a residential project equal to or greater than 100 Equivalent Residential Connections (ERCs), a payment in an amount equal to twenty-five (25%) percent

of the amount of capital connection charges as set forth by City Code attributable to a proposed development to be ultimately constructed shall be payable to the City within thirty (30) days after final approval of the Florida Department of Environmental Protection application. In the event a permit application is denied by the Florida Department of Environmental Protection, the City shall, upon request of the applicant, refund only the capital connection charges paid by the applicant for the denied permit application. If a valid Department of Environmental Protection permit expires prior to construction of the utility system and acceptance of conveyance thereof by the City, or if a permit has expired, then the applicant shall be entitled to a refund less a five (5%) percent administrative fee based on total funds paid to the City. The City shall not be further obligated to the applicant or the applicant's heirs, assigns or successors to provide the utility capacity. Additionally, upon denial or expiration of a permit, and upon request of the applicant, all bonds or letters of credit posted hereunder shall be released by the City. The remainder seventy-five (75%) percent of all fees and charges due the City for connecting the development to the utility system is due and payable within five (5) business days after final plat approval by the City. Residential projects of less than 100 Equivalent Residential Connections shall be exempt from the previously stated requirement.

(3) The City shall be entitled to recover all costs, including but not limited to reasonable attorney's fees or collection service charges, incurred in collecting delinquent utility fees and charges. Any fee or charge due under this section which shall not be paid when due may be recovered by referring the account to a third-party collection agency or by bringing an action at law.

(4) Commitments and permits are not transferable or negotiable for properties other than as shown on the original application approved by the City.

(5) No building permit shall be issued prior to the receipt of all utility capital connection fees and charges, or such other time as may be specifically provided for by ordinance, resolution, or agreement.

(D) Determination of equivalent residential connection factors for water and wastewater services.

(1) For purposes of calculating and imposing the water and wastewater capital charge provided for in this subsection, the ERC factor for any particular connection shall be calculated and imposed in the manner provided as follows:

<b>Establishment</b>	<b>Unit</b>	<b>ERC Factor</b>
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<b>Residential</b>		
Single Family Home	Per Unit	1.000
Duplex (1 or 2 bedrooms)	Per Unit	0.833
Duplex (3 or more bedrooms)	Per Unit	1.000
Multi-Family (1 or 2 bedrooms)	Per Unit	0.833
Multi-Family (3 or more bedrooms)	Per Unit	1.000
Mobile Home (1 or 2 bedrooms)	Per Unit	0.667
Mobile Home (3 or more bedrooms)	Per Unit	0.833
<b>Commercial</b>		
Auditorium/Meeting Rooms	Per Seat	0.019
Barber/Beauty Shop	Per Opr. Sta.	0.340
<b>Food Service</b>		
Restaurant/Cafeteria	Per Seat	0.113
Restaurant (24 hours)	Per Seat	0.189
Restaurant ("Fast Food")	Per Seat	0.057
Bar/Cocktail Lounge	Per Seat	0.075
Hotel/Motel (not including food service banquet and meeting rooms, and guest laundry)	Per Room	1.000
Motel (See Hotel)		
Office Building (not including food service and retail space)	Per 100 sq. ft.	0.038
Service Station	Per Bay	1.132
Add	Per Wash Bay	3.663
Add	Per Toilet	1.132

Theater	Per Seat	0.012
Dinner Theater	Per Seat	0.075
Trailer Park (Overnight)	Per Space	0.377
Dentist Office	Per Dentist	0.943
	Per Wet Chair	0.755
Doctor Office	Per Doctor	0.943
Church	Per Seat	0.011
Schools (Middle and High)	Per Student	0.075
Schools (Elementary, Day Care, Nursery)	Per Student	0.028
Schools (Boarding)	Per Student	0.472
Laundry (Self-Service)	Per Machine	1.510
Retail Store (with self-service pumps)	Per Restroom	1.500
(Add remaining fixture units)		
(Without pumps use fixture units)		
Automotive Repair & Maintenance Stores	Per Bay	0.500
Hospital (Medical)	Per Bed	0.730
	Per Employee	0.055
Hospital (Mental)	Per Bed	0.480
	Per Employee	0.055
Prison	Per Inmate	0.480
	Per Employee	0.055
Nursing Home	Per Resident	0.370
	Per Employee	0.055

(2) One equivalent residential connection (ERC) shall, for purposes of this Section, have an assigned value of 1.00. For wastewater service capacity, one ERC is hereby established and determined to be equal to a flow of 210 gallons per day, average annual basis (210 GPD), or such other value as may

be later, approved or determined by the Florida Department of Environmental Regulation.

(3) For water service capacity, one ERC is hereby established and determined to be equal to a flow of 225 gallons per day, average annual basis (225 GPD).

(4) The "total equivalent residential connection value" for an establishment shall be calculated by multiplying the ERC factor listed above by the number of units. The minimum ERC factor for each non-residential establishment shall be one (1).

(5) For all establishments not listed above, the total wastewater equivalent residential connection (ERC) value for wastewater service capacity shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by fifteen (15), and then dividing that numerator by two hundred ten (210). For example:

$$\text{Total Wastewater ERC Value} = \frac{\text{Number of Fixture Units} \times 15}{210 \text{ GPD/ERC}}$$

The wastewater capital charge shall be determined by using the following formula:

$$\text{Total ERC Value} \times \text{wastewater prevailing rate} = \text{wastewater capital charge}$$

(6) For all establishments not listed above, the total water equivalent residential connection (ERC) value for water service capacity shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by fifteen (15), and then dividing that numerator by two hundred twenty-five (225). For example:

$$\text{Total ERC Value} = \frac{\text{Number of Fixture Units} \times 15}{225 \text{ GPD/ERC}}$$

The water capital charge shall be determined by using the following formula:

$$\text{Total ERC Value} \times \text{water prevailing rate} = \text{water capital charge}$$

(7) Connections that have not paid the wastewater capital charge and are not specifically exempt from paying the wastewater capital charge are required to pay a wastewater capital charge recovery usage component. The wastewater capital charge recovery usage component shall be the rate as set forth in Table 1 below per one thousand (1,000) gallons of water metered for wastewater billing purposes. These charges will continue to be paid until such time that the

wastewater capital charges in effect at time of connection to the system are satisfied.

(8) Connections that have not paid the water capital charge and are not specifically exempt from paying the water capital charge are required to pay a water capital charge recovery usage component. The water capital charge recovery usage component shall be the rate as set forth in Table 1 below per one thousand (1,000) gallons of water metered for water billing purposes. These charges will continue to be paid until such time that the water capital charges in effect at time of connection to the system are satisfied.

(9) The amount of each capital charge recovery usage component shall be effective January 1, 2021, as follows:

<b>Date</b>	<b>Water Capital Charge Recovery Usage Component</b>	<b>Wastewater Capital Charge Recovery Usage Component</b>
January 1, 2021	\$1.28	\$1.94

(10) The above ERC Schedule applies to establishments being connected to the City of Palm Bay Utilities Water and Wastewater System.

(E) *Capital improvement funds; establishment; expenditure guidelines; application and pledge to revenue bonds.*

(1) The water and water with reclaimed water capital charges and capital charge recovery usage components collected pursuant to this tariff shall be deposited into a fund called the "Connection Fee Fund". The wastewater and wastewater with reclaimed water capital charges and capital charge recovery usage component shall likewise be deposited into a fund called the "Connection Fee Fund". The water and water with reclaimed water capital charges and capital charge recovery usage component so deposited shall be used only for the acquisition of the City's water system and all components thereof and additions thereto, and the construction and acquisition of additions and extensions to the City's water system and all components thereof including raw water supply facilities, transmission facilities, mains, ground storage facilities, new pumping facilities, water treatment plants, and distribution facilities in order to provide additional water treatment capacity or water service capacity to those new customers who connect to the City's water system. The wastewater and wastewater with reclaimed water capital charges and capital charge recovery usage component so deposited in the above-mentioned fund shall be used only for the acquisition of the City's wastewater system and all components thereof and

additions thereto, and the construction and acquisition of additions and extensions to the City's wastewater system and all components thereof, including collection facilities, transmission facilities, treatment facilities, and effluent disposal facilities, in order to provide additional sewage treatment capacity, effluent disposal capacity, or wastewater service capacity to those new customers who connect to the City's wastewater system. The reclaimed water capital charges and capital charge recovery usage components collected pursuant to this Tariff shall be deposited into a fund called the "Connection Fee Fund". The reclaimed water capital charges and capital charge recovery usage component so deposited shall be used only for the acquisition of the City's reclaimed system and all components thereof and additions thereto, and the construction and acquisition of additions and extensions to the City's reclaimed system and all components thereof including filtration facilities, disinfection facilities, storage tanks, transmission facilities, mains, remote storage facilities, new pumping facilities, and distribution facilities in order to provide additional reclaimed treatment capacity or reclaimed service capacity to those new customers who connect to the City's reclaimed system.

(2) The City may by resolution provide for the application of some or all of the water, wastewater, or reclaimed water capital charges to the payment or security for the payment of revenue bonds issued in whole or in part for the purpose set out in subsection (E)(1) hereof, provided that the amount of water or wastewater capital charges applied to the payment of such bonds shall not exceed the amount of bond proceeds actually expended for such purpose with interest at the average rate borne by said bonds. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security there for.

(F) *Application; allocation of water or wastewater service capacity.* The City may require all information on said application that it deems reasonable and necessary and may reject applications it determines are incomplete. Any application for water or wastewater service shall contain a legal description of the land constituting the service area for which the said permit is to be issued. The legal description shall include only those lands owned by the applicant for which the water or wastewater developer's agreement is to serve. If any such person described hereinabove fails to apply for and purchase water and/or wastewater service capacity under these rules, the City Council may consider said failure in determining whether to grant or deny any connection to the system. The City Council shall by separate ordinance establish rules for the allocation of water and/or wastewater service capacity and may by resolution establish a fee for application review payable by applicants.<<"

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 5.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 6.** If any portion, clause, phrase, sentence, or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative, or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative, or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 7.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2024-XX, held on \_\_\_\_\_, 2024; and read in title only and duly enacted at Meeting 2024-XX, held on \_\_\_\_\_, 2024.

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Rob Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

***Strikethrough words shall be deleted; highlighted words that will included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.***