

## CHAPTER 1300. CONCURRENCY AND MOBILITY/IMPACT FEES

### SECTION 1302. MOBILITY AND IMPACT FEES

#### 1302.1. Uniform Procedures and Provisions

##### A. Legislative Findings and Intent

1. This section is intended to implement and be consistent with the Comprehensive Plan and is intended to be consistent with Section 163.31801, Florida Statutes (the Florida Impact Fee Act).
2. It is the further intent of this section that new development pay for its fair share of the cost of capital improvements required to accommodate new development through the imposition of impact and mitigation fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the County to construct or acquire capital improvements to accommodate that new development.
3. It is also the intent of this chapter to be consistent with the principles for allocating a fair share of the cost of new capital improvements to new users as established by the Florida Supreme Court and the District Courts of Appeal of Florida in the case of *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So.2d 314 (Fla. 1976), and other cases. This is accomplished by ensuring new development does not pay more than its proportionate share of the cost of these capital improvements; ensuring such proportionate share does not exceed the cost incurred by the County for such capital improvements to accommodate new development; and ensuring that new development receives sufficient benefit from the funds collected in the form of such capital improvements.
4. It is the further intent of this section to establish a system for the efficient and coordinated administration of mobility, impact, and mitigation fees authorized by this section, including the consistent administration of payments, expenditures, appeals, offsets, credits, refunds, and reviews of independent impact analysis.
5. It is not the intent of this chapter to collect any mobility, impact, and mitigation fees from any new development in excess of the actual amount necessary to offset new demands for capital improvements.
6. It is not the intent of this chapter that any monies collected from any mobility, impact, or mitigation fees deposited in a fee account ever be commingled with monies from a different fee account, ever be used for a type of capital improvement or equipment different from that for which the fees are paid, or ever be used to operated, repair, or maintain existing capital improvements.

B. Mobility, Impact, and Mitigation Fees Adopted

1. School Impact Fees (Effective February 28, 2001)

At the request of the Pasco County District School Board (School Board), the County adopts school impact fees. The County, by the adoption of this section, does not intend to explicitly or implicitly assume any portion of the responsibilities of the School Board and the State to provide for the school system, but only seeks to supplement funding of those growth-related capital improvements which have not been provided for by the State.

2. Mobility Fees (Effective July 20, 2011)

The County adopts mobility fees to assist in providing increased capacity for the transportation system to accommodate the increased demand development activity will have on the transportation system.

3. Water and Wastewater Service Impact Fees (Effective April 27, 1999)

The County adopts water and wastewater service impact fees in order to assist the County in attempting to maintain existing levels of water and wastewater service and to avoid future deficiencies in service.

4. Park and Recreation Impact Fees (Effective January 29, 2002)

The County adopts park and recreation impact fees in order to defray all or a portion of the parks and recreation facilities required to accommodate the impact on those facilities imposed by new residential construction.

5. Library Impact Fees (Effective September 4, 2002)

The County adopts library impact fees in order to defray all or a portion of the library facilities required to accommodate the impact on those facilities imposed by new residential construction.

6. Fire Combat and Rescue Service Impact Fees (Effective January 21, 2004)

The County adopts fire combat and rescue service impact fees in order to defray all or a portion of the costs of the fire combat and rescue service facilities and equipment required to accommodate the impact on that system imposed by new building construction.

7. Hurricane Preparedness Mitigation Fees (Effective September 21, 2004)

The County adopts hurricane preparedness mitigation fees to address the impacts created by new development on hurricane shelter availability and evacuation capability in the County

C. General Provisions.

1. This section shall not invalidate the provisions of any development order or development approval requiring the developer to contribute property as a part of the development approval process, unless the development order or development approval is specifically amended or modified by the Board of County Commissioners (BCC). The donation of land, recording of a plat, or other development approval prior to the effective date of an individual mobility, impact, or mitigation fee or any amendment, adjustment, or modification thereto shall not exempt or vest any person from the provisions of this section or any amendment thereto unless such person is exempt pursuant to the terms of this section.
2. Effect of payment of mobility, impact, or mitigation fees on other applicable County and/or city land development regulations:
  - a. The payment of mobility, impact, or mitigation fees shall not entitle the applicant to a Building Permit, Certificate of Occupancy (CO), or a final inspection as such other requirements, standards, and conditions are independent of the requirements for payment of an impact fee.
  - b. Neither these procedures nor this section shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards, or other applicable standards or requirements of the Comprehensive Plan, this Code, the Pasco County Code of Ordinances, and the codes and ordinances of the municipalities in the County which shall be operative and remain in full force and effect without limitation.
3. The payment of a mobility, impact, or mitigation fee shall be in addition to all other fees, charges, or assessments due for the issuance of a Building Permit, CO, and a final inspection.
4. Where an impact fee, mobility fee, or mitigation fee is imposed, the fee shall be paid or it is a violation of this Code. The obligation for payment of mobility and impact fees shall run with the land.

D. Reductions of Mobility Fees and Waivers of School Impact Fees

Mobility fees may be reduced and school impact fees waived on new residential construction within communities and subdivisions providing housing for persons who are fifty-five (55) years of age or older. The reduced mobility fee is referred to as the "age restricted" rate in the mobility fee schedule. New residential construction within communities and subdivisions meeting the requirements of 42 U.S.C. § 3607 and Florida Statutes will not be presumed to be entitled to a reduction or a waiver. The County has created

the following procedures in order for the mobility fee reduction and/or school impact fee waiver to be granted:

1. The County shall be informed at the time of platting that such community or subdivision is intended to provide housing for persons who are fifty-five (55) years of age or older.
2. Communitywide covenants and restrictions in compliance with Form 1302.1-A of this section incorporated herein, providing that no one under the age of twenty-two (22) is permitted to permanently reside within the community must be adopted, recorded, and submitted to the County.
3. Prior to the issuance of a CO or where a CO is not required prior to the final inspection, a copy of a recorded deed containing the age restrictive language as provided in Form 1302.1-B of this section and incorporated herein shall be produced to the County in lieu of payment of the full mobility fee and/or the school impact fee.

However, where a breach or dissolution of such a restrictive covenant occurs or the community that the waived dwelling units are located within ceases to be a fifty-five (55) and older community, the full mobility fee and school impact fee shall be due pursuant to the fee schedules in place at the time that the breach or dissolution occurs. However, no mobility fee and/or school impact fees shall be due during the term of any litigation between the homeowners' association or similar entity responsible for the enforcement of the communitywide covenants and restrictions described in this section and a unit/property owner for the enforcement of the restriction on permanent occupancy by persons under twenty-two (22) years of age.

E. Independent Fee Calculations

The following shall apply to all fees except for mobility fees and hurricane preparedness mitigation fees:

1. Applicant Fee Study. If an applicant opts not to have an impact fee determined according to the applicable impact fee schedule(s), then the applicant shall prepare and submit to the County Administrator or designee an independent fee calculation study for the new construction for which a Building Permit(s) is sought for each impact fee schedule challenged.
2. The independent fee calculation study shall follow the prescribed methodologies and formats used in the study as adopted by the County, as may be amended, that is relied upon by the County in the challenged fee schedule.
3. The proposed independent fee calculation study shall be submitted to the County Administrator or designee who shall, after consultation and

review of the independent fee study with any consultant if one has been retained, mail a written determination to the applicant within sixty (60) calendar days of a completed submittal as to whether such calculation complies with the prescribed methodologies and formats. A CO shall not be issued or final inspection conducted in the interim, unless the applicant pays the impact fee based upon the impact fee schedule in effect.

4. The County Administrator or designee shall consider the documentation submitted by the applicant, but is not required to accept such documentation if it is deemed to be incomplete, inaccurate, or unreliable. The County Administrator or designee may, in the alternative, require the applicant to submit additional or different documentation for consideration.
5. If the independent fee calculation study is determined to be acceptable by the County Administrator or designee then the applicant shall pay the independent fee calculation impact fee amount in lieu of an amount based upon the challenged impact fee schedule.
6. If the independent fee calculation study is determined to be unacceptable, then the independent fee calculation shall be rejected. Such rejection shall be in writing and set forth the reasons for the rejection and shall be provided to the applicant by certified mail. The applicant shall pay an impact fee based upon the impact fee schedule in effect at the time of rejection.
7. The applicant shall have thirty (30) calendar days from the receipt of written notification of rejection to request a hearing pursuant to this Code. A CO shall not be issued or a final inspection conducted in the interim, unless the applicant pays the impact fee based upon the impact fee schedule in effect.

F. Credits

Unless a longer time period is specifically authorized by the BCC in a development approval, credit accounts for all mobility and impact fee credits shall expire twenty (20) years after the date that the credit account was last utilized, which shall be the date that the County last received a written assignment of credits from the credit account. If the mobility/impact fee credit account has never been utilized, the credit account shall expire twenty (20) years after the date that the credit account was established, unless a longer time period is specifically authorized by the BCC in a development approval.

The following shall apply to all park, school, and library impact fees. Any credit information for mobility fees, fire combat and rescue service impact fees, hurricane preparedness mitigation fees, and water and wastewater service impact fees is located in the individual section:

1. Any applicant or successor in interest that donates land or a facility may be entitled to a credit against the impact fees due provided:

- a. The costs of such site or facility have been included in the applicable impact fee study; or
  - b. The land donated or facility provided is determined by the County Administrator or designee to be a reasonable substitute for the impact fee due. For a school site or school facility donation, the Superintendent shall determine whether the donation is a reasonable substitute for the school impact fee due.
2. The credit shall be granted at such time as the land or facility, which is the subject of the donation, has been conveyed to and accepted by the County or School Board. The credit shall be granted in the name of the person conveying the land or facility. To convey land, the following provisions shall be met, at no cost to the County or School Board, and all documents shall be in a form approved by the County or School Board attorney:
- a. The delivery of a complete and current abstract of title or a title insurance commitment to insure the said property for the amount equal to the value of the credit;
  - b. The delivery of a deed, in appropriate form, with sufficient funds for recording same based upon the agreed value of the property;
  - c. The payment of taxes for the current year through the time of conveyance pursuant to Chapter 196, Florida Statutes;
  - d. The issuance of a title insurance policy subsequent to the recording of the deed and escrow of taxes; and
  - e. Any and all other documents reasonably required by the County or School Board attorney.
3. The value of the credit shall be calculated as follows:
- a. If land was donated, the value of the credit shall be based upon the value of the donated property at the time of conveyance, unless the person donating the property and the County Administrator or designee or the BCC agrees in a development approval to another valuation date. The amount of the credit shall be 115 percent of the assessed value of the conveyed land as determined by the County Property Appraiser unless the person donating the property and the County Administrator or designee or the BCC agrees in a development approval to another credit amount.

Credits issued for donated land may not be utilized or applied toward the facility portion of the impact fee.

- b. The amount of a credit for facilities or equipment shall be established in a written agreement between the person constructing or donating the facilities or equipment and the BCC. Credits issued for donated or constructed facilities may not be utilized or applied toward the land or land acquisition portion of the impact fee. For parks and recreation facilities, credit against the facility portion of the impact fee shall only be issued against the portion of the parks and recreation impact fee that is earmarked for the facilities that have been provided. For example, if a person constructs or donates parks and recreation facilities on park land that only fall within the definitions of P & R--Water Access and P & R—Other, such person shall not be entitled to credit against the P & R—Fields and Courts component of the parks and recreation impact fee.
- c. If the value of the donated land or facility is greater than the applicable portion of the actual or estimated impact fee due on a per dwelling unit basis for the entire development that received the credits, then the excess value of the donated land or facility shall become a credit against the applicable portion of the impact fee that may be transferred within the same impact fee expenditure district, as provided for in this section.

Requests for credits shall be submitted to the County Administrator or designee. The request for a credit shall be accompanied by relevant documentary evidence establishing the eligibility of the applicant for the credit.

- 4. Credits for donations of land and/or the provision of school facilities, where such land or facilities are located within the boundaries of the cities, shall not occur without the formal approval of the Superintendent and the County Administrator or designee.
- 5. Credits may be sold, assigned, or conveyed to another person within the same development that received the credits or, if that development that has excess credits pursuant to this Code Section 1302.1.F.3.c transferred to another project or development within the same impact fee expenditure district. To transfer credits, the applicant must submit to the County Administrator or designee a letter signed and notarized by the owner of the credits that specifies the name of the person receiving the transfer of the credits and the amount of the credit being transferred. Regardless of the date of transfer, the transfer of the credit shall not be effective until the transfer letter is received and accepted by the County Administrator or designee.
- 6. Unused credits shall not be refunded.

G. Government Acquisition Credit

1. Program Established

- a. If the County, or another entity with eminent domain authority, acquires land by condemnation, by threat of condemnation, or otherwise purchases land with a building or structure located thereon that existed on or after the original effective date of an impact fee ordinance and intends to remove the said building or structure, and such land is either: (1) replaced with a use that precludes construction of any buildings; or (2) encumbered by a deed restriction that precludes construction of any buildings, the County shall create an impact fee credit, equivalent to the impact fee(s) that would be due for the said building or structure if rebuilt on the date that title transfers pursuant to an Order of Taking, the date of closing for other acquisitions, or some other date as approved by the BCC (government acquisition credit).
- b. The County shall establish a separate government acquisition credit tracking system for each applicable impact fee.
- c. Government acquisition credits may be appropriated to a property owner at the discretion of the County. Where a government acquisition credit is appropriated to a property owner:
  - (1) Language, including the amount of credit, granting the credit to the property owner must be included in the agreement for sale and purchase and approved by the BCC; or
  - (2) If a petition for eminent domain has been filed, the credit and credit amount must be included in the settlement agreement of the eminent domain proceeding and approved by the BCC.
- d. The property owner who receives a credit may utilize the said credit for payment of the impact fees due upon relocation. If the credit amount is insufficient to pay the impact fees due at the new location at the time such fees are due, the property owner shall be responsible for payment of the difference between the credit amount and the impact fees due, unless the BCC specifically appropriates additional unused government acquisition credit from the applicable tracking system or another funding source to pay the difference between the credit amount and the impact fees due.
- e. Unless otherwise approved by the BCC in the agreement for sale and purchase or the eminent domain settlement agreement, the property owner receiving the credit must utilize the government acquisition credit within three (3) years from



the date that the title transfers or the date of closing for other acquisitions.

- f. Government acquisition credit shall not be available to property owners when the issue of compensation is determined by a jury, pursuant to Section 73.071, Florida Statutes.

2. Calculation

The amount of the governmental acquisition credit shall be calculated based on the fees in effect at the time that title transfers pursuant to an Order of Taking, the date of closing for other acquisitions, or other date as approved by the BCC. Government acquisition credits may not be available for impact fees adopted or increased after the date of the agreement for sale and purchase, the eminent domain settlement agreement, or some other agreement.

3. Estimates

A person may request at any time a nonbinding estimate of the government acquisition credit for a particular property; however, such estimate is subject to change until the BCC approves the agreement for sale and purchase or the settlement agreement of an eminent domain proceeding.

4. Transfers and Appropriations

- a. Any government acquisition credits not used within three (3) years or created but not appropriated to an individual property owner shall remain within the applicable tracking system until used. The BCC or, subject to purchasing authority, the County Administrator or designee, may appropriate unused government acquisition credits within the applicable tracking system to pay impact fees on behalf of: (1) qualified businesses pursuant to the Economic Development Incentive Ordinance; (2) residences or developments eligible for the mobility affordable housing rate or other affordable housing fee payers; or (3) any other use permitted by law. The BCC's utilization or transfer of such credits is not subject to transfer restrictions.
- b. Government acquisition credits are not transferable from property owners to other persons or nongovernmental entities unless otherwise approved by the BCC in the agreement for sale and purchase, the eminent domain settlement agreement, or some other agreement.

- c. Government acquisition credits may not be refunded or exchanged for monies. No monies shall be payable where the amount of the said credit exceeds the impact fees due.

H. Refunds

1. The procedures in this section shall apply when:
  - a. A refund is required by a substantive provision of this chapter, any agreement, or other applicable law;
  - b. A refund is due because a final determination of eligibility for a waiver, credit, offset, or reduced impact fee pursuant to this chapter, any agreement, or applicable law was not made or available at the time the impact fee was paid; or
  - c. A refund is due if the development activity or new construction is canceled due to noncommencement of construction before the funds have been encumbered and expended pursuant to this section. For purposes of this section, noncommencement means either notice to the County of intent not to commence development or the date of expiration of a Building Permit following the application of any applicable Building Permit extensions. Refund requests shall be made within ninety (90) days from the date of noncommencement. If a refund is granted, any applicable administration fee shall be retained by the County.
2. Refunds shall be made in accordance with the following procedure: The present owner of the property for which the impact fee was paid or owner of the right to the refund pursuant to a contract, agreement, or letter must petition the County Administrator or designee for the refund. The written petition must be submitted to the County Administrator or designee and must contain:
  - a. The name, address, and telephone number of the petitioner.
  - b. A notarized, sworn statement that the petitioner is the current owner of the real property for which the fee was paid or the petitioner is the lawful owner of the right to the refund pursuant to a contract, agreement, ordinance, or letter.
  - c. A copy of the latest recorded deed, contract, agreement, or letter establishing the right to the refund.
  - d. A copy of the most recent ad valorem tax bill.
  - e. The name of the person to whom the refund shall be issued.

- f. If applicable, the description and documentation of the County's nonuse of the impact fee.

Upon acceptance of a completed request for a refund, the County Administrator or designee shall review the request and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant. After complete verification and satisfaction of the requirements, the County shall refund the mobility or impact fee.

3. The right to a refund shall run with the land; accordingly, all refunds due pursuant to this chapter shall be issued to the current owner of the real property entitled to the refund, unless another person presents the County with a contract, agreement, or letter signed and notarized by the current owner, or an agreement or ordinance is approved by the BCC which assigns or allocates the current owner's right to such refund to the other person.
4. Within ninety (90) days from the date of acceptance of a complete petition for refund, the County Administrator or designee will issue a final determination on the refund request.
5. Other than retained administration fees, no fee shall be charged for a refund and a refund received shall not include interest or investment income while on deposit in an impact fee fund.
6. For the purpose of refund requests for failure to use impact fee funds, "budgeted" shall mean that the funds are allocated within the County's Capital Improvement Plan, Capital Improvements Element, or some other appropriate capital improvement plan. The County Administrator or designee may request that the BCC grant a one (1) year extension to the timeframe for budgeting or encumbering a specific fee type. Fees collected shall be deemed to be spent on the basis of "the first fee in shall be the first fee out." For purposes of this section, all mobility and impact fees shall be deemed to be spent prior to the expenditure of any interest or investment income. The present owner shall request the refund within one (1) year following the end of the calendar year immediately following eight (8) years from the date on which the fee was received.

I. Appeals

Unless otherwise provided for in this Code, a person who receives a final determination from the County Administrator or designee pursuant to this section, shall have the right to request an appeal hearing before the BCC in accordance with the procedures and rules in this Code.

J. Administration Fees

Administration fees shall be set by separate resolution(s) or ordinances of the BCC and shall be based upon the actual cost of administering and implementing the County's mobility, impact, and fee programs including, but not limited to, establishing, reviewing, updating, calculating, and collecting impact fees; establishing and maintaining credit and other impact fee accounts; and processing refunds of impact fees. Administration fees shall be in addition to the impact fees due pursuant to this chapter and impact fee credits or offsets shall not apply to administration fees. Any administration fees collected to date on any of the County's impact fees may be used for funding administrative costs associated with any of the impact fees. Administration fees shall be nonrefundable unless the BCC or a court of law with jurisdiction determines that the administration fees exceed the County's actual cost of administering and implementing the County's mobility and impact fee programs or otherwise violate Florida law.

### **FORM 1302.1-A**

To be acceptable to the County for waiver of the school impact fee or reduction of the mobility fee, transportation impact fee (TIF) or trip generation/transportation mitigation, community covenants must contain, at a minimum, the following language in its entirety.

1. The community described in these covenants is a housing facility or community operating under the exemption requirements of the Fair Housing Act, 42 U.S.C. § 3607, as amended, as housing for older persons [insert one of the following that applies, a or b]:
  - a. At least eighty (80) percent (unless a more restrictive provision is provided for in the general applicable covenants) of the units are occupied by at least one (1) person fifty-five (55) years or older, and the housing facility or community complies with 24 C.F.R. § 100.305, 100.306, and 100.307, as amended.
  - b. All occupied units are solely occupied by persons sixty-two (62) years of age or older.
2. No person under the age of twenty-two (22) [Note: age restrictions greater than twenty-two (22) are also permissible; age restrictions less than twenty-two (22) are not permissible] shall be allowed to permanently occupy any residential unit in [insert name of community]. Occupancy by the said individual(s) in any residential unit(s) for more than ninety (90) days (replace with time period less than ninety [90] days as applicable) shall constitute "permanent" occupancy.
3. The [insert developer, successor and assigns, and/or name of community property homeowners' association, as applicable] shall be responsible for enforcing the foregoing restrictions and shall be jointly and severally liable along with the owner(s) of the violating unit(s) to the County and the District School Board of Pasco County (School Board), for payment(s) of any school impact fees, mobility fees, TIFs, or transportation mitigation waived or reduced if such restrictions have been violated. Such payment(s) shall be calculated in accordance with the school impact fee, mobility fee, TIF, or the transportation mitigation rates or rules in effect at the time the violation(s) are discovered.

4. The foregoing restrictions are for the benefit of the County and the School Board who shall have the right to enforce violations of the foregoing restrictions by assessment of school impact fees, TIFs, mobility fees, or transportation mitigation by any means legally available to the [insert developer, successor and assigns, and/or name of the community property homeowners' association, as applicable], or by any other legal remedy, including injunctive relief. The County and the School Board shall be entitled to recover any attorney's fees expended to enforce violations of the foregoing restrictions or to collect school impact fees, TIFs, or transportation mitigation waived or reduced in violation of the foregoing restrictions.
5. The foregoing restrictions shall survive any expiration of the other applicable deed restrictions and shall not be removed or amended without the consent and written agreement of both the County and the School Board.

#### **FORM 1302.1-B**

To be acceptable to the County for waiver of the school impact fee or reduction of the mobility fee, transportation impact fee (TIF), or trip generation/transportation mitigation, individual deeds and lease agreements for real property/units within housing facilities or communities established pursuant to 42 U.S.C. § 3607 must contain the following language in its entirety:

1. The community of [insert name of community] is intended to be "housing for older persons" pursuant to the Fair Housing Act, 42 U.S.C. § 3607. No person under the age of twenty-two (22) [Note: age restrictions greater than twenty-two (22) are also permissible; age restrictions of less than twenty-two [22] are not permissible] shall be allowed to permanently occupy any residential unit in [insert the name of the community]. Occupancy by the said individual(s) in any residential unit(s) for more than ninety (90) days (replace with time period less than ninety [90] days, as applicable) shall constitute "permanent" occupancy.
2. The foregoing restrictions are for the benefit of the County and the District School Board of Pasco County (School Board) who shall have the right to enforce violations of the foregoing restrictions by assessment of school impact fees, mobility fees, TIFs, or transportation mitigation by any means legally available to the [insert name of the community property homeowners' association], or by any other legal remedy, including injunctive relief. The County and the School Board shall be entitled to recover any attorney's fees expended to enforce violations for the foregoing restrictions or to collect school impact fees, mobility fees, TIFs, or transportation mitigation waived or reduced in violation of the foregoing restrictions.
3. The foregoing restrictions shall not be removed or amended without the consent and written agreement of both the County and the School Board.
4. This restrictive covenant shall run with the land and be binding and enforceable against the grantee, his heirs, assigns, and successor in interest.