

ORDINANCE NO. O-2019-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF TAMARAC, FLORIDA, CREATING SECTION 10-5.7 ENTITLED “NEW DEVELOPMENT IMPACT FEES” OF CHAPTER 10, OF THE TAMARAC CITY CODE, ADOPTING AN IMPACT FEE SCHEDULE AT 50% OF THE TOTAL FEE AMOUNT FOR GOVERNMENTAL FACILITIES, PARKS AND RECREATIONAL FACILITIES, AND MULTIMODAL TRANSPORTATION FACILITIES; ADOPTING AN IMPACT FEE STUDY; CREATING AN IMPACT FEE SCHEDULE AND LAND USE CATEGORIES; ESTABLISHING CRITERIA AND ADMINISTRATIVE PROCEDURES FOR INDIVIDUAL ASSESSMENT OF IMPACT FEES, REFUNDS, CREDITS, COLLECTION OF FEES AND FAIR SHARE AGREEMENTS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTS; PROVIDING FOR CODIFICATION; PROVIDING A SAVINGS PROVISION, PROVIDING A CONFLICTS PROVISION, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission retained the firm of Tindale-Oliver to study the need to impose impact fees for governmental facilities, parks and recreational facilities, and multi-modal transportation facilities; and

**WHEREAS**, Tindale-Oliver has prepared and presented to the City Commission a report titled, “City of Tamarac Impact Fee Study,” dated October 18, 2019 (hereinafter the “Technical Report”) which establishes the proportionate share of new development’s impacts on the public facilities for which impact fees are collected pursuant to this Ordinance; and

**WHEREAS**, the Technical Report has been presented to and reviewed by the City Commission, which has determined: (1) that impact fees are necessary to offset the costs to the City associated with meeting the necessary public service and facility demand created by projected new residential and non-residential development; (2) that the amount of the impact fees bears a reasonable relationship to the burden imposed upon the City to provide the new public facilities addressed in the Technical Report to

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new development, (3) the expenditure of impact fees, pursuant to the terms of this Ordinance, will result in a beneficial use to such new development reasonably related to the impact fees, per dwelling unit, by type and per increment of non-residential development; (4) that an “essential nexus” exists between the projected new development and the need for additional public facilities to be funded via the development fees; and (5) that the amount of the development fees is “roughly proportional” to the fair share of the additional public facilities needed to provide adequate service to new development; and,

**WHEREAS**, the City of Tamarac Comprehensive Plan establishes the policy that incorporates a review process for assessing the adequacy of public services and facilities and does not allow new development unless adequate public capital facilities exist or are assured; and

**WHEREAS**, the City of Tamarac Comprehensive Plan further establishes the policy that new development is required to pay its proportionate share of required improvements for new or expanded public capital facilities required by such development; and

**WHEREAS**, the City Commission has amended the Comprehensive Plan to include a Capital Improvement Schedule for public facility improvements to serve new development subject to the payment of impact fees, as supported by the Technical Report; and

**WHEREAS**, pursuant to §163.31801, Fla. Stat.:

- (a) the Technical Report, and the impact fees recommended therein, are based on the most recent and localized data;
- (b) this Ordinance includes procedures for accounting and reporting of impact fee collections and expenditures in order to assure compliance with applicable legal standards;

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- (c) this Ordinance includes separate accounting funds for each public facility for which an impact fee is collected;
- (d) administrative fees charged pursuant to this Ordinance for the collection of impact fees are limited to actual costs; and
- (e) this Ordinance requires audits of the City's financial statements to include an affidavit of the City's chief financial officer stating that the requirements of §163.31801, Fla. Stat. have been complied with; and
- (f) this Ordinance requires that the collection of the impact fee will not be required earlier than the date of issuance of the building permit for the property that is subject to the fee; and
- (g) the Technical Report demonstrates that the impact fees are proportional and reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- (h) the Technical Report and this Ordinance show that the impact fees are proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction; and
- (i) this Ordinance specifically earmarks funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users and does not pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction; and

**WHEREAS**, the impact fees assessed pursuant to this Ordinance are necessary to ensure the public health, safety, and welfare of the residents of the City of Tamarac.

**NOW, THEREFORE, BE IT ORDAINED BY** the City Commission of the City of Tamarac as follows:

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**SECTION 1. LEGISLATIVE FINDINGS AND INTENT.** The City Commission of the City of Tamarac hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance and the City staff reports relating to this Ordinance as the legislative findings and intent of the City Commission.

**SECTION 2.** Section 10-5.7, entitled “New Development Impact Fees” of Chapter 10 of the *Code of Ordinances of the City of Tamarac* is created to read as follows:

**Section 10-5.7 New Development Impact Fees.**

**(A) Procedural and Administrative Requirements**

(1) **Purpose and Authority**

- (a) The City Commission of the City of Tamarac recognizes that growth and development in the City will require that the capacity of the City's public facilities be expanded in order to maintain adequate levels of service, and that without a funded program for public facility improvements, new growth and development will have to be limited in order to protect the health, safety and welfare of the citizens of the City of Tamarac.
- (b) The City Commission has completed a study establishing the type, amount and cost of projected public facility improvements needed to serve new growth and development.
- (c) The purpose of this Section is to ensure that new growth and development that is approved by the City pays a fair share of the costs of public facilities needed to serve new growth and development.

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- (d) This Section, which requires new development to pay reasonable impact fees, requires new development to pay its pro rata share of the reasonably anticipated expansion costs of new public facilities created by new growth and development, which is the responsibility of the City in order to carry out its Comprehensive Plan, as amended, and adopted under Section 163.3161, et seq., Florida Statutes, and is in the best interest of the public health, safety, and welfare.
- (e) The City of Tamarac has determined that it is in the best economic interests of the citizens of the City to ensure that certain forms of development be exempt from the requirements of payment of certain impact fees.
- (f) The technical data, findings and conclusions herein are based on the Comprehensive Plan, as amended, the 2019 Impact Fee Study (the "Technical Report"), and other studies and reports.

(2) **Adoption of Technical Report as Basis of Impact Fees**

The City hereby adopts and incorporates by reference, the report entitled "City of Tamarac Impact Fee Study," prepared by Tindale-Oliver, and dated October 18, 2019 (referred to herein as the "Technical Report), which, among other things, supports the amounts and reasonableness of the impact fees imposed by this Section.

(3) **Interpretations of Sections and fee schedule.**

Interpretation of the provisions of this Section shall be made by the City Manager or the City Manager's designee.

(4) **Effect on other regulations and requirements**

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- (a) This Section may not be construed to alter, amend, or modify any other provision of the City's Land Development Code and Code of Ordinances. Other provisions of the City's Land Development Code and Code of Ordinances shall be operative and remain in full force and effect notwithstanding any contrary provisions, definitions, or intentions that are or may be expressed or implied in this Section.
- (b) The payment of impact fees shall not entitle the applicant to a building permit unless all other applicable land use, land development, zoning, planning, concurrency, and other applicable requirements, standards, and conditions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of impact fees required by this Section.
- (c) This Section, including the specific impact fee ordinances for particular public facilities, shall not affect, in any manner, the permissible use of property, density or intensity of development, design and improvement standards, or other applicable standards or requirements of the Land Development Code.

**(B) Definitions**

Article 6 Rules of Construction and definitions shall apply to this Section. However, the following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Developer* For purposes of this Section means a person, corporation, organization, or other legal entity undertaking development.

*Development* For purposes of this Section means any new residential or nonresidential construction or expansion of building(s) or structure(s), or any changes in the use of any building(s) or structure(s) or land use that will generate additional impact on the city's public facilities.

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Encumbered means legally obligated or otherwise committed to use by appropriation or contract.

Essential public services means services or buildings owned, managed, or operated by or in the interest of a governmental entity, which provides a function critical to the health, safety, and welfare of the public, but which is not proprietary in nature. Essential public services may specifically include, but not be limited to, public schools (including charter schools), water and sewer services, emergency services, publicly-owned housing, public safety facilities and services.

Fair share means that share or portion of the cost of public facility improvements which is reasonably connected to, or has a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

Fee payer means a person undertaking development who pays a fair share impact fee in accordance with the terms of this Section.

Governmental facilities means the land and buildings as may be necessary to meet the needs for City administration which are created by new development, including those costs which are incidental to the above.

Governmental facilities capital costs include, but are not limited to, costs associated with the planning, design and construction of new or expanded governmental facilities, which have a life expectancy of three or more years, and the land acquisition, land improvement, design, and engineering related thereto. Such costs do not include routine and periodic maintenance expenditures or personnel, training, or other operating costs but do include the following costs as they relate to the provision of governmental facilities:

- (1) The cost of all labor and materials;

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- (2) The cost of all lands, property, rights, easements and franchises acquired, including costs of acquisition or condemnation;
- (3) The cost of all plans and specifications;
- (4) The cost of all construction, new drainage facilities in conjunction with new buildings and structures, and site improvements required in accordance with the Comprehensive Plan or Land Development Code;
- (5) The cost of relocating utilities to accommodate new construction;
- (6) The cost of planning, engineering and legal services;
- (7) The cost of all land surveying, and soils and materials testing; and
- (8) The cost of mitigating negative impacts of construction including natural resource impacts, environmental impacts, noise impacts, air quality impacts, and community impacts.

Impact fee means a fee imposed pursuant to this Section.

Impact fee account means an account established by the City for the purpose of segregating impact fee revenues collected for a particular public facility from all other city funds.

Level of service is a measure of the availability and accessibility of public facilities in support of public facility services.

Multimodal fee means a fair share impact fee, imposed by this Section, necessary to mitigate the multimodal capital costs to the City to provide the multimodal facilities needed to offset the impacts of new residential and nonresidential growth in the City.

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Multimodal facilities means transportation and transit facilities, including land, which are planned and designed to provide off-site transportation capacity to new development, in contrast to "on-site" improvements, which are necessary to provide safe and/or efficient access to a particular development. The fact that either type of improvement may have incidental benefits of special or general character shall not be considered in determining which facilities are considered a multimodal facility. The character of the improvement shall control a determination of whether an improvement meets the definition of multimodal facility and the physical location of the improvement on or off-site shall not be considered determinative.

Multimodal capital costs include, but are not limited to, costs associated with the planning, design and construction of new or expanded roadway improvements to the city's classified road system and transit facilities which have a life expectancy of three or more years, and the land acquisition, land improvement, design, and engineering related thereto. Such costs do not include routine and periodic maintenance expenditures or personnel, training, or other operating costs, but do include the following costs as they relate to the provision of multimodal improvements to the city's classified road system and transit facilities:

- (1) The cost of all labor and materials;
- (2) The cost of all lands, property, rights, easements and franchises acquired, including costs of acquisition or condemnation;
- (3) The cost of all plans and specifications;
- (4) The cost of all construction, including new through lanes, new turn lanes, new bridges, new drainage facilities in conjunction with roadway improvements which add capacity to the roadway system, new street lighting, new traffic signalization and landscaping, and new curbs, sidewalks, medians and shoulders, all in accordance with the Comprehensive Plan or Land Development Code;

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- (5) The costs of transit improvements, including bus shelters, bus stops, benches, transfer stations, and fleet vehicles;
- (6) The cost of bike paths and pedestrian walkway improvements within planned roadway alignments;
- (7) The cost of relocating utilities to accommodate new roadway construction;
- (8) The cost of planning, engineering and legal services;
- (9) The cost of all land surveying, and soils and materials testing; and
- (10) The cost of mitigating negative impacts of construction including natural resource impacts, environmental impacts, noise impacts, air quality impacts, and community impacts.

*Non-commencement* means the cancellation of construction activity making a material change in a structure, or the cancellation of any other development activity making a material change in the use or appearance of land.

*Public facilities* means capacity-adding multimodal facilities, parks and recreation facilities, and governmental facilities for which impact fees are collected pursuant to this Section.

*Public facilities capital costs* include governmental facilities capital costs, parks and recreation facilities capital costs, and multimodal capital costs.

*Parks and recreation facilities* means the land, buildings, structures, equipment and facilities as may be necessary to meet the needs for the City parks and recreation system, which are created by new development, including those costs which are incidental to the above.

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Parks and recreation facilities capital costs include, but are not limited to, capital costs associated with the planning, design and construction of new or expanded parks and recreation facilities which have a life expectancy of three or more years, and the land acquisition, land improvement, design, and engineering related thereto. Such costs do not include routine and periodic maintenance expenditures or personnel, training, or other operating costs, but do include the following as they relate to the provision of parks and recreation facilities:

- (1) The cost of all labor and materials;
- (2) The cost of all lands, property, rights, easements and franchises acquired, including costs of acquisition or condemnation;
- (3) The cost of all plans and specifications;
- (4) The cost of new equipment;
- (5) The cost of all construction, new drainage facilities in conjunction with new buildings and structures, and site improvements required in accordance with the Comprehensive Plan or Land Development Code;
- (6) The cost of relocating utilities to accommodate new construction;
- (7) The cost of planning, engineering and legal services;
- (8) The cost of all land surveying, and soils and materials testing; and
- (9) The cost of mitigating negative impacts of construction including natural resource impacts, environmental impacts, noise impacts, air quality impacts, and community impacts.

Technical report means the “City of Tamarac Impact Fee Study,” prepared by Tindale-Oliver, and dated October 18, 2019.

**(C) Applicability of this Section.**

(1) **Affected area.**

This Section shall apply to all new development within the City. Impact fees for particular public facilities may apply to less than the entire City, only as indicated specifically in this Section.

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(2) **Type of development affected.**

Except where specifically exempt by the provisions of this Section, this Section shall apply to all new development.

(3) **Type of development not affected.**

The following types of development shall be exempt from the payment of impact fees pursuant to this Section:

Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;

For multimodal fees, the construction of accessory buildings or structures which will not increase the traffic counts associated with the principal building or structure or the land;

For parks and recreation, and governmental facilities impact fees, the construction of accessory buildings or structures which will not increase the number of individuals living or working in the principal building or structure or the land;

The replacement of a destroyed or partially destroyed building or structure, with a new building or structure of the same size and use;

- (a) The construction of agricultural structures;
- (b) Temporary uses; and
- (c) Essential public services.

(4) **Reductions.** Reductions from the requirement to pay impact fees pursuant to this Section shall be granted only as specifically provided in this Section.

(D) **Collection of impact fees; fair share agreements; when not paid by mistake or inadvertence; liens**

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- (1) Collection. Impact fees required by this Section shall be assessed against new development and collected in full at the time of the issuance of a building permit by the City. The City may withhold the issuance of a TCO or CO until the applicant has paid in full the applicable impact fees imposed by this Section. The obligation for payment of assessed impact fees shall run with the land. The City may authorize the payment of impact fees at another point in the development of the property only pursuant to a fair share fee agreement as provided in this section. The City Commission may establish and collect an administrative charge (which will be limited to actual costs) to offset its actual costs of impact fee collection by adoption of a resolution.
- (2) Fair share fee agreements. At any time prior to the issuance of a building permit, the owner of property may enter into a fair share fee agreement with the City providing for payment of impact fees imposed by this Section. Such fee agreement may provide for installment payments of the fee for a term not to exceed 12 months, credit and security arrangements acceptable to the City and other matters relating to the fee. Within 14 days after execution by the City, the fair share fee agreement shall be recorded in the Broward County public records.
- (3) Collection of fees when not paid by inadvertence; liens. If the impact fees are not paid as required by this Section prior to the issuance of a certificate of occupancy because of mistake or inadvertence, the City shall proceed to collect the impact fees as follows: \_\_\_\_\_

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- (a) The City shall serve, by certified mail, return receipt requested, an impact fee statement notice upon the applicant at the address set forth in the application for building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of Broward County. The City also shall attach a copy of the impact fee statement notice to the building permit posted at the affected construction site if the building is under construction. Service of the impact fee statement notice shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.
- (b) The impact fee statement notice shall contain the legal description of the property and shall advise the applicant and the owner as follows:
- (i) The amount due and the general purpose for which the impact fee was imposed.
  - (ii) That the impact fee shall be delinquent if not paid and received by the City within 60 calendar days of the date the impact fee statement notice is received, excluding the date of receipt, and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid;

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- (c) That in the event the impact fee becomes delinquent a lien against the property for which the building permit was secured shall be recorded in the Official Records Book of Broward County. The impact fee shall be delinquent if, within 60 calendar days from the date of the receipt of the impact fee statement notice by either the applicant or the owner, or the date said notice was attached to the building permit, neither the impact fees have been paid and received by the City, nor a hearing requested pursuant to the requirements above. In the event a hearing is requested, the impact fees shall become delinquent if not paid within 30 calendar days from the date the City Commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of the earliest receipt of said impact fee statement notice or the hearing date of the City Commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent (10%) of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.
- (d) Should the impact fee become delinquent, the City shall serve, by certified mail return receipt requested, a "Notice of Lien" upon the delinquent applicant if the building is under construction at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the Property Appraiser of Broward County. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the impact fee, the City shall file a Claim of Lien with the Clerk of the Circuit Court in and for Broward County.

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- (e) Upon mailing of the notice of lien, the city attorney shall file a claim of lien with the Clerk of the Circuit Court in and for Broward County for recording in the Official Records of Broward County. The claim of lien shall contain the legal description of the property, the amount of the delinquent impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien.
- (f) After the expiration of six months from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§173.04 - 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provision were set forth herein verbatim.
- (g) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other subsequently filed liens and claims, until paid as provided herein.
- (h) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinances or administrative regulations of the City or any applicable law or administrative regulation of the State of Florida. Failure of the City to follow the procedure set forth in this Section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the City or any applicable law or administrative regulation of the State of Florida.

**(E) Individual assessment of impact fees.**

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- (1) Any applicant prior to or in conjunction with the submission of an application for a building permit or within 30 days of the date of payment of impact fees, may petition the city manager for a determination that: i) the amount of the impact fees imposed on the new development is inappropriate based on the specific land use category applied to the residential or nonresidential development and/or based on the amount of development used to calculate the impact fees and/or based on the service units, as identified in the technical report, to be generated by the applicant's new development as documented by studies and data supported by qualified experts, or ii) the impact fees are otherwise unlawfully imposed. The petition shall specify in detail the basis on which the applicant asserts that the amount of the impact fees is inappropriate or unlawful.
- (2) The petition shall be on a form provided by the city and shall, at a minimum, include: identification of the disputed factor(s), a detailed statement asserting the basis for the dispute, the data relied upon by the petitioner, a detailed statement by a qualified professional engineer, planner or other appropriate professional, and, if filed after payment of impact fees, a dated receipt for payment of the impact fees issued by the city's building department. The applicant/petitioner shall be responsible for all costs incurred by the city in reviewing and evaluating the petition, including but not limited to, staff time and costs of outside consultants used at the discretion of the city. Failure to timely file a petition for impact fee determination shall waive any right to challenge, review or recalculate the impact fee payment.
- (3) Within 15 business days of receipt of an individual assessment analysis, the city manager or his/her designee shall determine if the individual assessment analysis is complete. If the city manager or his/her designee determines the application is not complete, he or she shall send a written statement specifying the deficiencies by mail to the person submitting the application. Until the deficiencies are corrected, the city manager or his/her designee shall take no further action on the application.

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- (4) When the city manager or his/her designee determines the individual assessment analysis is complete, he or she shall review it within 30 business days. The city manager or his/her designee shall approve the proposed fee if he or she determines that the data, factors, and methodology used to determine the proposed impact fee are professionally acceptable and fairly assess the costs for capital improvements to the city's public facilities systems that are necessitated by the proposed development if the facilities are to be maintained at adopted levels of service. If the city manager or his/her designee determines that the data, factors, or methodology are unreasonable, the proposed fee shall be denied, and the developer shall pay the impact fees according to the schedule established in 10-5.7(K) of this Section or as set by the city manager or his/her designee, if the use had not previously been identified in the fee schedule.
- (5) Any applicant may appeal the city manager's or his/her designee's decision on an individual assessment analysis by filing a petition to the City Commission of the City consistent with 10-5.7(J).

**(F) Credits.**

- (1) Any person who initiates any development may apply for a credit against the impact fees imposed by this Section for any contribution, payment, construction, or dedication of land accepted and received by the City for public facilities, not otherwise required in order to obtain development approval, consistent with the Comprehensive Plan, including all public facilities capital costs.
- (2) No credit shall exceed the impact fee imposed by this Section for the proposed development, unless the applicant provides public facility capacity in excess of the fair share demand created by its proposed development.

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- (3) Development agreements entered into prior to the adoption of this Section which contained public facility improvements may be entitled to a credit under the provisions of this section if the improvement is a public facility and is consistent with the Comprehensive Plan.
  
- (4) Except as limited above, if an applicant is entitled to a credit, such credit shall be equal to the dollar value of the cost of the public facilities contributed, paid for, constructed, or dedicated to the city, based on the following criteria:
  - (a) The actual cost, or estimated cost of improvements based on recent bid sheet information of the city; and
  - (b) A qualified appraisal of the fair market value of any land.
  
- (5) The property owner shall initiate a determination of entitlement to credit by submitting a proposed credit agreement to the city manager or his/her designee. The credit agreement shall include the following information:
  - (a) A proposed plan of specific public facility improvements, prepared and certified by a duly qualified and licensed Florida engineer; and
  - (b) The estimated costs for the suggested public facilities improvements consistent with the definition of public facilities capital costs, which shall be based on local information for similar public facilities improvements, along with a construction timetable for the completion of such improvements.
  
- (6) The proposed credit agreement shall be prepared by qualified professionals in the field of planning and engineering, impact analysis, and economics, as related to the particular impact fee to be credited.

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- (7) Within 15 business days of receipt of the proposed credit agreement, the city manager or his/her designee shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the city manager or his/her designee shall send a written statement to the applicant outlining the deficiencies. The city manager or his/her designee shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.
- (8) Once the city manager or his/her designee determines the credit agreement is complete, he or she shall review it within 30 business days, and shall recommend to the City Commission that the proposed credit agreement be approved if it is determined that the proposed public facility improvement is consistent with the Comprehensive Plan, and the proposed costs for the suggested public facility improvement are professionally acceptable and fairly assess the cost for the capital improvement. If the city manager or his/her designee determines that either the suggested public facilities improvement is not consistent with the Comprehensive Plan or that the proposed costs are not acceptable, he or she shall propose a suggested public facility improvement similar to that proposed, but consistent with the provisions of this Section.
- (9) If the proposed credit agreement is approved by the City Commission, a credit agreement shall be prepared and signed by the applicant and the City. The credit agreement shall specifically outline the public facility improvement that will be constructed by the applicant, the time by which it shall be completed, and the dollar credit the applicant shall receive for construction of the public facilities improvement.
- (10) Within 14 days after execution by the city, the credit agreement shall be recorded in the Broward County public records.

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- (11) If the City increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under F.S. §§ 163.3180 or 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. This subsection (F) shall operate prospectively and not retrospectively.

**(G) Use of funds collected; impact fee accounts.**

- (1) Impact fees collected pursuant to this Section shall be used solely for the purpose of acquisition, expansion, and development of the public facilities identified in the Comprehensive Plan, the need for which results from and the provision of which will benefit new development paying impact fees. Allowable expenditures include, but are not limited to:
- (a) Public facilities and public facilities capital costs identified in the Comprehensive Plan to benefit new users;
  - (b) Repayment of monies transferred or borrowed from any budgetary fund of the City which were used to fund the acquisition, expense and development of the public facilities identified in the Comprehensive Plan where the use of the monies is reasonably connected to, or has a rational nexus with, the increased impact on the public facilities generated by the new residential or nonresidential construction;
  - (c) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide funds for acquisition, expansion and development of public facilities identified in the Comprehensive Plan;
  - (d) Administration of the City's impact fee program to the extent that such administration costs do not exceed actual costs of such administrative activities.

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- (2) Impact fees collected shall be encumbered for the construction of public facilities within seven years of the date of collection.
  
- (3) In order to ensure that impact fee revenues are earmarked and spent solely for the expansion of public facilities necessary to offset the impacts of new development, the following provisions apply:
  - (a) The City shall establish and maintain separate impact fee accounts for each public facility for which an impact fee is collected, in accordance with the provisions of this Section.
  - (b) Impact fees shall be spent solely for the public facility category for which they were collected.
  - (c) Any amounts in an impact fee account not immediately necessary for expenditure shall be invested in an interest bearing account and all interest income derived from such investments shall be deposited in the impact fee account.
  
- (4) Impact fee revenues shall remain segregated from other City funds and only impact fees and accrued interest shall be maintained in the impact fee accounts.
  
- (5) Amounts withdrawn from an impact fee account must be used solely in accordance with the provisions of this Section. Amounts on deposit in an impact fee account shall not be used for any expenditure that would be classified as a maintenance, operations, or repair expense or to address existing deficiencies in public facilities.

**(H) Refunds.**

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- (1) Any impact fee collected may be returned to the fee payer if the approved development is canceled due to non-commencement of construction before the funds have been spent or encumbered. Refunds may be made in accordance with this section provided the present owner of the approved development files a petition for a refund within six months from the date of non-commencement.
  
- (2) In the absence of a fair share fee agreement and in the event impact fees are not encumbered within seven (7) years from the date of collection, the City shall refund the amount of the fee along with accrued interest to the owner of the land for which the fee was collected. For purposes of refunds, the owner of the land for which an impact fee was paid shall be the owner of record at the time that the refund is paid. The owner of the property on which an impact fee has been paid shall have standing to sue for a refund under the provisions of this section. No action shall be commenced after one year after the date of expiration of the required encumbrance date.
  
- (3) A refund application shall include the following information:
  - (a) A notarized sworn statement that the fee payer paid the impact fee for the property and the amount paid;
  - (b) A copy of the dated receipt issued by the City for payment of the fee;
  - (c) A certified copy of the latest recorded deed for the property; and
  - (d) A copy of the most recent ad valorem tax bill.
  
- (4) Within fifteen (15) business days of receipt of a refund application, the city manager or his/her designee shall determine if it is complete. If the city manager or his/her designee determines the refund application is not complete, he or she shall send a written statement specifying the deficiencies by mail to the person submitting the refund application. Unless the deficiencies are corrected, the city manager or his/her designee shall take no further action on the refund application.

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- (5) When the city manager or his/her designee determines the refund application is complete, he or she shall review it within thirty (30) business days, and shall approve the proposed refund if he or she determines that the City has not spent or encumbered an impact fee within seven (7) years from the date the fees were paid.
- (6) When the refund application is approved, the money shall be returned with interest actually accrued, less any administrative charges (which will be limited to actual costs) paid to offset the City's costs of collection.
- (7) Any fee payer may appeal the city manager's or his/her designee's written decision on a refund application by filing a petition with the City Commission consistent with 10-5.7(J).

**(I) Updating, indexing, annual reporting, and audits.**

- (1) At least once every five years, the City shall update the technical report which provides the basis for the impact fees imposed under this Section.
- (2) During years when no update occurs, as required above, and beginning in the year 2021, the impact fee schedule set forth in this Section shall be adjusted annually to account for inflationary increases in the costs to the City for providing public facilities to new development. These annual adjustments shall be consistent with the methodology set forth in the technical report and shall be based on the Construction Cost Index calculated by the Engineering News-Record (ENR), the Broward County Property Appraiser, the U.S. Department of Labor Consumer Price Index, and Florida Department of Transportation databases, as applicable and appropriate to a particular public facility.

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(3) Audits of the city's financial statements, which are performed by a certified public accountant pursuant to F.S. §218.39, and submitted to the auditor general, must include an affidavit signed by the finance director, stating that the City has complied with the requirements of F.S. §163.31801. The City will provide for annual accounting and reporting of impact fee collections and expenditures and will account for the revenues and expenditures of such impact fee in a separate accounting fund.

(4) All updates and annual adjustments to this Section shall comply with statutory requirements for notice and publication.

**(J) Appeals.**

(1) Initiation. A fee payer may appeal a final decision of a city manger made pursuant to this Section or any provision of this Section to the City Commission, by filing an appeal, in writing, with the city clerk, within twenty (20) calendar days of the decision. The appeal shall include a written notice stating and specifying briefly the grounds of the appeal. The city clerk shall place the appeal on the City Commission's agenda for a regularly scheduled meeting or a special meeting called for that purpose, and forward the record of the matter that is on appeal to the City Commission.

(2) Record. The record considered by the City Commission shall be the record of the application associated with the final decision being appealed from and any other documents related to the decision.

(3) Notice. The city clerk shall provide the applicant at least fifteen (15) calendar days notice of the Appeal before the City Commission by mail or hand delivery.

- (4) Hearing on Appeal. At the hearing on the appeal, the City Commission shall provide the appellant an opportunity to identify the grounds for the appeal and the basis for the city manager’s alleged error on the decision, based on the record. To the extent relevant, the city manager whose decision is being appealed from shall be allowed to respond, based on the record. After the presentations, the City Commission may hear from any other person(s) it deems appropriate, and then based on the testimony heard at the hearing and the record affirm, modify, or reverse the decision of the city manager or the provision of this Section.
- (5) Standards. To reverse a decision of a city official, the City Commission shall find that there is a clear and demonstrable error in the application of the facts in the record to the applicable standards set forth in this Section. If the City Commission reverses or modifies the decision, it shall provide the city official clear direction on the proper decision. In no case shall the City Commission have the authority to negotiate the amount of the impact fees or waive the impact fees otherwise specified in this Section. The decision of the City Commission shall be final.
- (6) Form of Decision. The City Commission’s decision on the appeal shall be in writing, and include findings of fact and the application of those facts to the relevant standards.

**(K) Imposition of Impact Fees by Public Facility**

**The following impact fees are hereby levied at 50% of the total fee amount on all new development, as set forth in Section 10-5.7(C):**

**Impact Fee Schedule**  
**(Government Facilities, Parks and Recreation, Transportation)**

<u>Land Use</u>	<u>Impact Unit</u>	<u>Govt Facilities</u>	<u>Parks and Rec.</u>	<u>Multi-Modal Transp. (Local)</u>	<u>Total Fee</u>	<u>50% of Fees</u>

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<u>Single Family (2,000 sq ft)</u>	<u>du</u>	<u>\$1,375</u>	<u>\$4,963</u>	<u>\$1,880</u>	<u>\$8,218</u>	<u>\$4,109</u>
<u>Multi-Family*</u>	<u>du</u>	<u>\$916</u>	<u>\$3,468</u>	<u>\$1,352</u>	<u>\$5,736</u>	<u>\$2,868</u>
<u>Light Industrial</u>	<u>1,000 sf</u>	<u>\$409</u>	<u>n/a</u>	<u>\$848</u>	<u>\$1,257</u>	<u>\$629</u>
<u>Office Building</u>	<u>1,000 sf</u>	<u>\$728</u>	<u>n/a</u>	<u>\$1,668</u>	<u>\$2,396</u>	<u>\$1,198</u>
<u>Retail</u>	<u>1,000 sf</u>	<u>\$1,235</u>	<u>n/a</u>	<u>\$2,667</u>	<u>\$3,902</u>	<u>\$1,951</u>
<u>Bank w/Drive-Thru</u>	<u>1,000 sf</u>	<u>\$1,219</u>	<u>n/a</u>	<u>\$4,106</u>	<u>\$5,325</u>	<u>\$2,663</u>
<u>Fast Food Rest. w/Drive-Thru</u>	<u>1,000 sf</u>	<u>\$7,936</u>	<u>n/a</u>	<u>\$20,094</u>	<u>\$28,030</u>	<u>\$14,015</u>

\*Transportation = 1-2 floors

(1) **Governmental facilities impact fee.**

(a) A governmental facilities impact fee shall be assessed and collected from new development, pursuant to all applicable provisions of this Section, in accordance with the fee schedule.

(b) There is hereby established a governmental facilities impact fee account into which all governmental impact fees collected shall be deposited. Governmental facilities impact fee revenues shall be spent only on governmental facilities and governmental facilities capital costs as provided in this Section.

(2) **Parks and recreation impact fee.**

(a) A parks and recreation impact fee shall be assessed and collected from new development, pursuant to all applicable provisions of this Section, in accordance with the fee schedule.

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- (b) There is hereby established a parks and recreation impact fee account into which all parks and recreation impact fees collected shall be deposited. Parks and recreation impact fee revenues shall be spent only on parks and recreation facilities and parks and recreation facilities capital costs as provided in this Section.
- (c) Reduction of part of parks and recreation impact fee: The City Commission may reduce the parks and recreation impact fee for a given development up to 50 percent if the City Commission determines that the private recreational space and facilities provided in the project are of such nature as to reduce substantially the project's impact upon the city's public need for expansion of the parks and recreation system. This reduction shall not exceed the actual cost of such private recreational space, or 50 percent of the parks and recreation levied impact fee, whichever is less.
- (3) **Multimodal Transportation Impact Fee**
- (a) A multimodal transportation fee shall be assessed and collected from new development, pursuant to all applicable provisions of this Section, in accordance with the following fee schedule.
- (b) Multimodal Transportation Impact Fee Account: There is hereby established a multimodal transportation fee account into which all multimodal transportation fees collected shall be deposited. Multimodal transportation fee revenues shall be spent only on multimodal transportation facilities and multimodal transportation capital costs as provided in this Section.

**SECTION 3. CODIFICATION.** The provisions of this Ordinance shall be codified as and become and be made a part of the *City of Tamarac Code of Ordinances*. The Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word “Ordinance”, or similar words, may be changed to “Section,” “Article”, or other appropriate word; provided, however, that Sections 3, 4, 5, 6, 7 and 8

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shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION 4. IMPLEMENTING ADMINISTRATIVE ACTIONS.** The City Manager, or designees, shall have the power and authority to implement the provisions of this Ordinance by taking appropriate administrative actions to include, but not be limited to, the promulgation of appropriate administrative rules and forms.

**SECTION 5. SAVINGS.** The prior actions of the City of Tamarac relating to the imposition and administration of impact fees and any and all related matters and processes, are hereby ratified and affirmed.

**SECTION 6. CONFLICTS.** To the extent of any conflict between any other City regulations and ordinances and this Ordinance, this Ordinance shall be deemed to control. Provided, however, that this Ordinance is not intended to amend or repeal any existing chapter or regulation, unless expressly set forth in this Ordinance.

**SECTION 7. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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 effect the validity of the remaining portion hereof.

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall become effective ninety (90) days following its adoption.

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**PASSED, FIRST READING** this \_\_\_\_\_ **DAY OF** \_\_\_\_\_, **2019.**

**PASSED, SECOND READING** this \_\_\_\_\_ **DAY OF** \_\_\_\_\_, **2019.**

BY: \_\_\_\_\_  
MAYOR MICHELLE J. GOMEZ

ATTEST

\_\_\_\_\_  
LILLIAN PABON, CMC  
ACTING CITY CLERK

RECORD OF COMMISSION VOTE: 1<sup>ST</sup> Reading  
MAYOR GOMEZ \_\_\_\_\_  
DIST 1: COMM. BOLTON \_\_\_\_\_  
DIST 2: COMM. GELIN \_\_\_\_\_  
DIST 3: COMM. FISHMAN \_\_\_\_\_  
DIST 4: V/M, PLACKO \_\_\_\_\_

RECORD OF COMMISSION VOTE: 2<sup>ND</sup> Reading  
MAYOR GOMEZ \_\_\_\_\_  
DIST 1: V/M. BOLTON \_\_\_\_\_  
DIST 2: COMM. GELIN \_\_\_\_\_  
DIST 3: COMM. FISHMAN \_\_\_\_\_  
DIST 4: COMM. PLACKO \_\_\_\_\_

I HEREBY CERTIFY that  
I have approved this  
ORDINANCE as to form

\_\_\_\_\_  
SAMUEL S. GOREN  
CITY ATTORNEY

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