

ORDINANCE 3226-21

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, ADOPTING A NEW CHAPTER 59, CITY CODE OF ORDINANCES ENTITLED, "MULTI-MODAL TRANSPORTATION IMPACT FEE," THEREBY CREATING AND IMPOSING A MULTI-MODAL TRANSPORTATION IMPACT FEE ON DEVELOPMENT WITHIN THE CITY LIMITS AND CREATING A MULTI-MODAL TRANSPORTATION IMPACT FEE PROGRAM AND ADOPTING RELATED PROVISIONS; PROVIDING FOR LEGISLATIVE FINDINGS AND ADOPTING A MULTI-MODAL TRANSPORTATION IMPACT FEE STUDY IN SUPPORT OF SUCH IMPACT FEE; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

RECITALS

WHEREAS, the City Commission has retained the firm of Kimley-Horn and Associates, Inc. to study the technical basis to enact a new multi-modal transportation impact fee program within the City limits; and

WHEREAS, Kimley-Horn and Associates, Inc. has prepared and presented to the City Commission a report titled "Multi-Modal Transportation Impact Fee Report, City of Winter Park, Florida" dated September 2021 (the "Impact Fee Study"), which establishes the proportionate share of new development's impacts on the Transportation Facilities for which impact fees will be collected pursuant to this Ordinance; and

WHEREAS, the Impact Fee Study 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 demand for additional Transportation Facilities created by projected new residential and non-residential development; (2) that the amount of the impact fees to be imposed by the City bears a reasonable relationship to the burden imposed upon the City to provide to new development the additional Transportation Facilities addressed in the Impact Fee Study, (3) the expenditure of transportation 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 "rational nexus" exists between the projected new development and the need for additional Transportation Facilities to be funded via the transportation impact fees; and (5) that the amount of the transportation impact fees is "roughly proportional" to the additional Transportation Facilities needed to provide adequate service to new development; and,

WHEREAS, pursuant to § 163.31801, Florida Statutes:

(a) The Impact Fee Study, and the multi-modal transportation impact fees recommended therein, are based on the most recent and localized data;

(b) This Ordinance includes procedures for accounting and reporting of transportation impact fee collections and expenditures in order to assure compliance with applicable legal standards;

(c) This Ordinance provides for a separate accounting fund for the revenues and expenditures for which an impact fee will be collected;

(d) Administrative fees charged pursuant to this Ordinance for the collection of transportation impact fees are limited to actual costs to the City to administer collection of transportation impact fees;

(e) The City provided notice on the 28th day of September, 2021, which is more than ninety (90) days prior to the effective date of this Ordinance; and

(f) 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

WHEREAS, planning for new roads and multimodal transportation improvements to serve new growth and development that generate additional travel, and the implementation of such planning through the comprehensive planning process is a responsibility of the city under Chapter 163, pt. II (the Community Planning Act), Florida Statutes, and is in the best interest of the health, safety, and welfare of the citizens of the City; and

WHEREAS, the Florida Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction; and

WHEREAS, on November 2, 2021, the City's local planning agency, the Planning & Zoning Board held a hearing on this Ordinance and made a recommendation to the City Commission; and

WHEREAS, the City Commission finds, based on the Impact Fee Study, that multi-modal improvements, including those associated with vehicular, bike, pedestrian, ADA accessible and transit travel, expand the capacity of the City's transportation facilities; and

WHEREAS, the transportation impact fees assessed pursuant to this Ordinance are necessary to ensure the public health, safety, and welfare of the residents of the City of Winter Park;

NOW THEREFORE, BE IN ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance as legislative findings.

Section 2. City Code Amendment. A new Chapter 59 of the Winter Park Code of Ordinances is hereby adopted to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

CHAPTER 59 – MULTI-MODAL TRANSPORTATION IMPACT FEE

Sec. 59-1. Purpose and authority.

- (a) The city commission of the City of Winter Park recognizes the urban nature of the city and that growth and development in the city will require that the capacity of the city's multi-modal transportation be expanded in order to maintain adequate levels of service and transportation choices, and that without a funded program for multi-modal transportation improvements, new growth and development would have to be limited in order to protect the health, safety, and welfare of the citizens of the City of Winter Park.
- (b) The city commission has completed a study identifying the cost, credit, and demand components of the multi-modal transportation impact fee.
- (c) The purpose of this chapter is to ensure that new growth and development that is approved by the city pays a proportional share of the costs of multi-modal transportation facilities needed to serve new growth and development.
- (d) This chapter, which requires new development to pay reasonable impact fees, requires new development to pay its proportional share of the reasonably anticipated expansion costs of new multi-modal transportation facilities created by new growth and development to assist the city in effectively implementing and carrying out the city's comprehensive plan, as amended and adopted under § 163.3161 et seq., Florida Statutes, and ensuing capital improvements program in the best interests of the public health, safety, and welfare.
- (e) The technical data, findings and conclusions herein are based on the report entitled "Multi-Modal Transportation Impact Fee Report, City of Winter Park, Florida," prepared by Kimley-Horn and Associates, Inc., and dated September 2021 (referred to in this Chapter as the "Technical Report").

Sec. 59-2. Adoption of technical report as basis of impact fees.

The city hereby adopts and incorporates by reference, the report entitled "Multi-Modal Transportation Impact Fee Report, City of Winter Park, Florida," prepared by Kimley-Horn and Associates, Inc., and dated September 2021 (referred to in this Chapter as the "Technical Report"), which was used as the basis for and supports the rates and reasonableness of the impact fees imposed by this chapter.

Sec. 59-3. Interpretations of this chapter.

Interpretation of the provisions of this chapter will be made by the Director of Planning & Transportation.

Sec. 59-4. Effect on other regulations and requirements.

- (a) This chapter may not be construed to alter, amend, or modify any other provision of the city's code of ordinances, including the city's land development regulations. Other provisions of the city's code of ordinances will be operative and remain in full force and effect regardless of any contrary provisions, definitions, or intentions that are or may be expressed or implied in this chapter.
- (b) The payment of impact fees does not entitle the applicant to a building permit or certificate of occupancy unless all other applicable land use, land development, zoning, planning, and other applicable requirements, standards, and conditions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of multi-modal transportation impact fees required by this chapter.
- (c) This chapter, including the specific impact fee ordinances for particular public facilities, does 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 city's land development regulations.

Sec. 59-5. Definitions.

The following words, terms, and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Winter Park, Florida.

Demand component of the impact fee means the vehicle miles traveled calculated for each land use, which is comprised of three (3) components: the trip generation rate; trip length; and percent new trips. The components for each land use are set forth in the technical report.

Developer means a person, corporation, limited liability company, partnership, trust, organization, or other legal entity undertaking development.

Development means any 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.

Director means the Director of the Planning & Transportation Department of the city or his/her designee.

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 provide a function critical to the health, safety, and welfare of the public, but which are not proprietary in nature. Essential public services may specifically include, but not be limited to, public schools (but does not include charter schools or public or private colleges or universities), water and sewer services, parks and recreation facilities, emergency services, publicly owned housing, and public safety facilities and services.

Proportional share means that share or portion of the cost of public facility improvements, which is reasonably attributable to or needed to serve a particular development.

Fee payer means a person undertaking development who pays a multi-modal transportation impact fee in accordance with the terms of this chapter.

Impact fee means a fee imposed pursuant to this chapter.

Impact fee account means an account established by the city for the purpose of segregating multimodal transportation impact fee revenues from all other city funds. This fund account shall be titled "multimodal transportation impact fee fund."

Infrastructure shall have the same meaning ascribed to such term in § 163.31801, Florida Statutes, as such definition may be amended or transferred.

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

Multi-modal transportation impact fee (or impact fee) means a proportional share impact fee, imposed by this chapter, necessary to mitigate the multi-modal capital costs to the city to provide the multi-modal facilities needed to offset the impacts of new residential and nonresidential growth in the city.

Multi-modal facilities means transportation (roadway, bicycle, ADA accessibility, and pedestrian) and transit facilities, including land, that 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 may not be considered in determining which facilities are considered a multimodal facility. The character of the improvement will control a determination of whether an improvement meets the definition of a multimodal facility, and the physical location of the improvement on or off-site will not be considered determinative.

Multi-modal capital costs include, but are not limited to, costs associated with the planning, design, and construction of new or expanded roadway, bicycle, ADA accessibility, and pedestrian improvements to the city's classified road system and transit facilities, which improvements have a life expectancy of five (5) or more years, and the land acquisition, land improvement, design, and engineering, materials, and construction costs related thereto. Additionally, such assets must have an individual cost of more than five hundred dollars (\$500.00) for tangible personal property or one thousand dollars (\$1,000.00) for buildings, improvements, infrastructure, capital equipment, accessibility improvements, and utility systems. Such costs do not include the cost of repair or maintenance or personnel, training, or other operating costs but do include the following costs as they relate to the provision of multimodal improvements to and capital equipment for 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 City of Winter Park comprehensive plan and its zoning regulations;
- (5) The costs of transit capital equipment and capital improvements, including lighting, landscaping, bus shelters, bus stops, benches, transfer stations, and park and ride lots;
- (6) The cost of bicycle facilities and pedestrian walkway improvements, including bridges;
- (7) The cost of accessibility projects and improvements in compliance with the requirements of the Americans with Disabilities Act of 1990;
- (8) The cost of relocating utilities to accommodate new roadway construction;
- (9) The cost of planning, engineering and legal services;

- (10) The cost of all land surveying, environmental testing, soils testing and materials testing;
- (11) The cost of mitigating negative impacts of construction including natural resource impacts, environmental impacts, noise impacts, air quality impacts, and community impacts;
- (12) Intelligent Transportation Systems (ITS); and
- (13) Other mobility improvements.

Regardless of the foregoing, multi-modal capital costs do not include any costs to which impact fees may not be applied pursuant to applicable statute.

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.

Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, limited liability company, association, two (2) or more persons having joint or common interest, or any other legal entity.

Public facilities means capacity-adding multi-modal facilities for which impact fees are collected pursuant to this chapter.

Technical report means the "Multi-Modal Transportation Impact Fee Report, City of Winter Park, Florida," prepared by Kimley-Horn and Associates, Inc., and dated September 2021.

Temporary uses means uses that are required in the construction phase of development or are uniquely seasonal in nature, including, but not limited to: contractor's project offices, project sales offices, seasonal sales of trees or farm produce, carnivals, and tent meetings.

Sec. 59-6. Applicability of this chapter.

- (a) Affected area. This chapter applies to all new development within the city.
- (b) Type of development affected. Except where specifically exempted by the provisions of this chapter, this chapter applies to all new development.
- (c) Type of development exempted. The following types of development are exempt from the payment of multi-modal transportation impact fees pursuant to this chapter:
 - (1) Alterations of an existing dwelling unit where no additional units or square footage are created and the use is not changed;

- (2) The construction of accessory buildings or structures that will not increase the traffic generation associated with the principal building or structure or the land;
 - (3) The construction of accessory buildings or structures approved by the Historic Preservation Board qualifying as a 'garage apartment' or 'accessory cottage' determined to be conforming uses on designated historic landmarks or resources, or on properties in a designated historic district, pursuant to section 58-469(3).
 - (4) The construction of a building or structure, or any approvals in conjunction with an application filed with the City of Winter Park and approved by the City Commission or other appropriate City body including but not limited to conditional use approval, zoning approval or building permit prior to the effective date of this chapter. The effective date of this chapter shall be January 1, 2022.
 - (5) Temporary uses; and
 - (6) Essential public services.
- (d) Reductions. Reductions from the requirement to pay impact fees pursuant to this chapter may be granted only as specifically provided in this chapter. Where new development involves the redevelopment of land or a change in use such that existing impact generating development is removed or substantially altered, the new development impact fees will be computed on the additional or new impacts only by computing impact fees for the existing development and subtracting such from the impact fees calculated for the new development. No impact fee credits or refunds will be given in the event a redevelopment of land or change in use results in a lower impact generating development. It being the city's intent to collect impact fees for only that additional impact generated by redevelopment or change in use over and above the impact attributable to the existing development. For properties where a building or structure has been demolished, destroyed or sits vacant and a replacement building or structure has not been permitted for reconstruction or redevelopment the previously existing building or structure will not be considered as previously existing for impact fee purposes and the new development will be charged at the full impact fee amount due (without reduction) based on the new development unless the applicant for redevelopment provides sufficient evidence of the most recent utilization of the demolished, destroyed or vacant building or structure is verified and approved by the Director.

Sec. 59-7. Collection of impact fees.

- (a) Impact fees required by this chapter will be assessed against new development not exempted pursuant to section 59-6(c) and will be

collected at the time of issuance of a building permit by the city. Any person who seeks to develop or redevelop real property located in the city by applying for a building permit shall pay the impact fees in the manner and amounts set forth in this chapter, unless such development or redevelopment is exempt pursuant to section 59-6(c). If the building permit is for less than the entire contemplated development, the fee shall be computed for the amount of development covered by the permit. The obligation to pay impact fees due shall run with the land. The city commission may, by resolution, establish and collect an administrative charge to offset its actual costs of impact fee collection.

- (b) In the event impact fees due under this chapter, or any portion or combination thereof, are not paid when due for any reason, including by impact fee payment based on incorrect land use activity, mistake or inadvertence, the city shall have the right to proceed to collect such fees as follows:
- (1) The city shall serve, by certified mail-return receipt requested and regular U.S. Mail, a notice of nonpayment upon the building permit applicant at the address set forth in the building permit application, and then current owner of the property based on the ownership information appearing on the Orange County Property Appraiser website. Provided the city sends the notice of nonpayment, the applicant's and/or current owner's failure to receive delivery of such notice of nonpayment shall not invalidate or otherwise impact the city's ability to collect the outstanding amount owed and place and foreclose a notice of lien against the applicable property.
 - (2) The notice of nonpayment shall contain:
 - a. A description of the property;
 - b. Advise the applicant and the property owner of the amount due and the fee and/or charges that were not paid; and
 - c. Advise that in the event the impact fees are not paid within 30 calendar days from the date of the notice of nonpayment, that a notice of lien against the applicable property for which the building permit was secured may be recorded in the official records of the county and such notice of lien may be foreclosed upon by the city to collect the outstanding sums owed plus accrued interest and attorneys' fees and other collection expenses.
 - (3) If the amount set forth in the notice of nonpayment is not paid within 30 days from the date of the notice of nonpayment, then:

- a. The outstanding balance owed to the city shall accrue interest at the rate of 12 percent per annum until such amount is paid in full;
 - b. The city may proceed to record a notice of lien against the applicable property in the official records of the county. Once recorded, the notice of lien shall constitute a lien against the property described therein; and
 - c. A copy of the notice of lien shall be served by U.S. Mail to the applicant and the property owner at the same addresses as set forth in subsection (1) above.
- (4) After the expiration of 60 days from the date of recording of the notice of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted and prosecuted in conformity with the procedures for the foreclosure of liens as set forth in the Florida Statutes. The city shall also have the right to bring an action for monetary judgment to collect past due amounts owed.
- (5) The owner shall be responsible for and the city shall be entitled to reimbursement for the payment of all collection expenses and costs, including attorneys' fees and litigation costs and recording and filing fees, incurred by the city in the collection of fees and charges, filing of liens and in actions to foreclose such liens or actions for a monetary judgment.
- (6) If impact fees or any portion or combination thereof, have not been paid when due, the city shall have the right to, without notice, immediately withhold the issuance of and not process for review any certificate of occupancy, development permit or development order applications associated with the development and property at issue and may issue and enforce a stop work order on construction associated with the development and property at issue until such fees and charges and the city's associated collection costs are paid in full.
- (c) 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 ordinance or administrative regulations of the city, any applicable law or administrative regulation of the state, or any agreement. 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, any applicable law or administrative regulation of the state, or any agreement.

Sec. 59-8. Alternative calculation of multi-modal transportation impact fees.

(a) In the event an applicant believes that the cost of off-site transportation improvements needed to serve his or her proposed development is less than the fee established in section 59-20, the applicant may, at no expense to the city, submit an alternative fee calculation to the director, or the director's designee, pursuant to the provisions of this section. At the time of issuance of a building permit, an applicant must pay or defer the assessed impact fee, clearly marked as "under protest," if he or she intends to submit an alternative fee calculation to the city. In such case, the applicant must, no later than ninety (90) days after payment or deferral under protest, notify the city, in writing, of his or her intent to submit the alternative impact fee calculation; failure to provide such written notification shall waive the applicant's right to submit an alternative fee calculation. Such an alternative fee calculation shall be timely submitted to the director for review and approval and is subject to approval by the city commission, including executing and entering into an alternative impact fee agreement with the city, prior to issuance of any certificate of occupancy, temporary or permanent. The alternative impact fee agreement must be in a form and with terms acceptable to the city.

If the data, information, and assumptions used by the applicant to calculate the alternative impact fee satisfy the requirements of this section, the alternative impact fee shall be deemed the impact fee due and owing for the proposed development. The proposed development shall be presumed to generate the maximum number of average daily trips to be generated by the most intensive use permitted under the applicable land development regulations such as the comprehensive plan or zoning regulations or under applicable deed or plat restrictions.

(b) The alternative impact fee shall be calculated by use of the following formula for each land use:

Fee = (Capacity Consumed x Cost of Capacity) – Credit

Where:

Capacity Consumed = ([Trip Rate x Assessable Trip Length x % New Trips] / 2) x (1 - Interstate & Toll Facility Discount Factor)

Cost of Capacity = Cost per Added Lane Mile / Average Vehicle-Capacity Added per Lane Mile

Credit = Present Value Gas Tax Credit + Present Value of Ad Valorem Credit, given 4.0% interest rate and a 25-year facility life

Trip Rate = the average daily trip generation rate for the type of development (land use) proposed, in vehicle-trips/day

Assessable Trip Length = the average trip length on collector roads or above, for the proposed land use, in miles (this excludes travel on local neighborhood roads).

Total Trip Length = the assessable trip length plus an adjustment factor of half a mile, which is added to the trip length to account for the fact that gas taxes are collected for travel on all roads including local roads

% New Trips = adjustment factor to account for pass-by trips associated with the proposed land use that are already on the roadway

Divide by 2 = the total daily miles of travel generated by the proposed land use is divided by two to prevent the double-counting of travel generated between two land use codes since every trip has an origin and a destination

Interstate & Toll Facility Discount Factor = discount factor to account for travel demand occurring on interstate highways and/or toll facilities

Cost per Added Lane Mile = unit cost to construct one lane mile of roadway, including multi-modal elements, in \$/lane-mile (\$4,540,000)

Average Vehicle-Capacity Added per Lane Mile = represents the average daily traffic on one travel lane at capacity for one lane mile of roadway, in vehicles/lane-mile/day (9,000)

Cost per Vehicle-Mile of Capacity = Cost per added lane mile divided by average capacity added per lane mile (\$504.44)

\$Tax/Gallon to Capital = the amount of equivalent gas tax revenue per gallon of fuel that is used for capital improvements, in \$/gallon (\$0.197)

Fuel Efficiency = average fuel efficiency of vehicles, in vehicle-miles/gallon (18.92)

Present Value = calculation of the present value of a uniform series of cash flows, gas tax payments in this case, given an interest rate, "i," and a number of periods, "n;" for 4.00% interest and a 25-year facility life, the uniform series present worth factor is 15.6221

Effective Days per Year = 365 days

Annual Gas Tax Credit = ([Trip Rate x Total Trip Length x % New Trips] / 2) x (Effective Days per Year x \$Tax/Gallon to Capital) / Fuel Efficiency

Ad Valorem Credit = present value of the amount of ad valorem taxes used toward transportation capacity, calculated based on the projected property value of the proposed land use (see calculations in Appendix D of Appendix A to the City of Winter Park Multi-Modal Transportation Impact Fee Report, 2021)

Fees are based on the applicable Trip Rate variable (i.e., 1,000 square feet, dwelling unit, rooms, etc.). The total impact fee is calculated as the size of the proposed development (measured by the Trip Rate variable) x the alternative impact fee (per the Trip Rate variable).

Sec. 59-9. Credits.

- (a) Any person who initiates any development may apply for a credit against the impact fees imposed by this chapter 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 capital improvements program, including all public facilities capital costs. Consistent with state law, the city must credit against the collection of the impact fees any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public facilities or infrastructure consistent with the city's capital improvements program, including land dedication, site planning and design, or construction. Any such contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee to be collected for the general category or class of public facilities or infrastructure for which the contribution was made.
- (b) Development agreements entered into prior to the adoption of this chapter that 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 capital improvements program.
- (c) A developer may apply for a credit against the impact fees imposed by this chapter upon development of a vacant parcel or the redevelopment of a parcel. It is the responsibility of the developer to provide evidence to the director as to the highest intensity building or structure constructed, or previously constructed upon the parcel by which to calculate the reduction in the total amount of impact fees otherwise required for the subject parcel. If this evidence cannot be ascertained, the city must use the trip generation rate of the last known building or structure on the parcel to determine whether payment of additional impact fees apply.
- (d) Except as limited above, if an applicant is entitled to a credit, such credit must 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:

 - (1) The value of the construction of an improvement or the value of conveyed capital equipment shall be based upon the actual cost of construction or acquisition of said improvement or capital equipment as certified by a professional architect or engineer as registered by the State of Florida or as shown by a manufacturer's or supplier's invoice. However, as to the

construction of improvements to land, in no event shall any credit be granted in excess of the estimated construction costs provided by a professional architect or engineer as registered by the State of Florida and approved by the city as reasonable, unless the construction project is competitively bid, in which case, the credit shall be limited to the actual cost of construction. The cost of professional services shall be reasonable as approved by the city and in accordance with local industry standards, in order to be eligible for impact fee credits. In the city's determination of reasonableness of the costs of construction, capital equipment and professional services, among other things, the city shall have the right to review and evaluate cost information provided by the applicant or property owner and use and rely on the opinion of other professionals; and

(2) The value of conveyed land shall be based upon a written appraisal of fair market value as determined by a Member Appraisal Institute (MAI) appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the appraisal does not conform to the requirements of this section and any applicable administrative regulations, the appraisal shall be corrected and resubmitted. In the event the city manager or city manager's designee disagrees with the appraised value, he or she may engage another MAI appraiser at the city's expense and the value shall be an amount equal to the average of the two appraisals. If either party does not accept the average of the two appraisals, a third appraisal shall be obtained, with the cost of said third appraisal being shared equally by the city and the owner or applicant. The third appraiser shall be selected by the first two appraisers and the third appraisal shall be binding on the parties.

(e) The developer shall initiate a determination of entitlement to credit by submitting a proposed credit agreement to the director. The credit agreement must include the following information:

(1) The property and project for which the credit agreement is being proposed;

(2) A proposed plan of specific public facility improvements, prepared and certified by a duly qualified and licensed Florida engineer;

(3) 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;

- (4) A legal description and sketch for any land proposed to be conveyed to the city and a written appraisal prepared in conformity with subsection (d)(2) of this section; and
- (5) General terms of a credit agreement as the director, the city manager and/or the city attorney may require.
- (f) 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.
- (g) Within ten (10) business days of receipt of the proposed credit agreement, the director shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the director will send a written statement to the applicant outlining the deficiencies. The director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.
- (h) Once the director determines the credit agreement is complete, the director will review it to determine: (1) if such proposed credit agreement is in conformity with needed contemplated improvements and additions to the city facilities impacted by the construction; (2) if the proposed conveyance of land or capital equipment and construction by the applicant is consistent with the public interest; and (3) if the proposed time schedule is consistent with the capital improvement program for the city facilities impacted by the construction. If the director determines that either the suggested public facilities improvement is not consistent with the capital improvements program or that the proposed costs are not acceptable, the director may propose a suggested public facility improvement similar to that proposed, but consistent with the provisions of this chapter. The director will make a recommendation to the city commission on the proposed credit agreement when such matter is scheduled for consideration.
- (i) If the proposed credit agreement is approved by the city commission, a credit agreement will be prepared and signed by the applicant and the city. The credit agreement must 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 will receive for construction of the public facilities improvement.
- (j) After execution by the city, the credit agreement will be recorded in the public records of Orange County.

(k) Credits shall expire 36 months from the effective date of the credit agreement. No credits given shall exceed the total amount of impact fees that become due under this chapter concerning impact construction upon the property.

Sec. 59-10. Use of funds collected; impact fee accounts.

(a) There is hereby established a separate trust fund account titled the "multi-modal transportation impact fee fund." Impact fees collected pursuant to this chapter must be used solely for the purpose of acquisition, expansion, and development of infrastructure as identified in the capital improvements program, 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:

- (1) Public facilities and public facilities capital costs, including projects and improvements related to accessibility pursuant to the requirements set forth in the Americans with Disabilities Act of 1990 identified in the capital improvements program;
- (2) 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 capital improvements program;
- (3) 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 capital improvements program; and
- (4) Administration of the city's impact fee program to the extent that such administration costs do not exceed actual costs.

(b) Impact fees collected will be spent or encumbered for the construction of public facilities within seven (7) years of the date of collection.

(c) 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:

- (1) The city shall establish and maintain a separate impact fee account for which the impact fee is collected, in accordance with the provisions of this chapter. This fund shall be the multimodal transportation impact fee fund.
- (2) Impact fees must be spent solely for capacity-adding improvements to the city's multimodal transportation system.
- (3) Any amounts in the multimodal transportation impact fee fund not immediately necessary for expenditure must be invested in

an interest bearing account, and all interest income derived from such investments must be deposited in the multimodal transportation impact fee fund.

- (d) Impact fee revenues must remain segregated from other city funds, and only impact fees and accrued interest may be maintained in the multimodal transportation impact fee fund.
- (e) Amounts withdrawn from the multi-modal transportation impact fee fund must be used solely in accordance with the provisions of this chapter. Amounts on deposit in the multimodal transportation impact fee fund must not be used for any expenditure that would be classified as a maintenance, operations, or repair expense.

Sec. 59-11. Refunds.

- (a) In the event multi-modal transportation impact fees paid are not spent or encumbered prior to the end of the city fiscal year immediately following the seventh (7th) year anniversary of the fee collection date, the city will refund the amount of the fees paid to the then current owner of the land for which the fee was collected upon the timely written application of the then current owner of the land. For purposes of refunds, the owner of the land on which an impact fee was paid is the owner of record at the time that the refund is paid. No refunds are due under this section if the impact fee payer or the owner of land for which the impact fee was paid voluntarily signed a waiver or release of the right to seek or claim a refund of an impact fee paid. The owner of the land for which an impact fee has been paid has standing to file suit for a refund under the provisions of this section. No cause of action may be commenced for receiving a refund of impact fees paid following one (1) year after the date of the required expenditure or encumbrance date for the impact fees paid.
- (b) A refund application must include the following information:
 - (1) A notarized sworn statement that the fee payer paid the impact fee for the land at issue, the amount paid and the date paid;
 - (2) A copy of the dated receipt issued by the city for payment of the impact fee;
 - (3) A certified copy of the latest recorded deed for the property and proof that the applicant is the current owner of the land;
 - (4) A copy of the most recent ad valorem tax bill;
 - (5) A statement indicating the applicant's position on the entitlement to the requested impact fee refund; and
 - (6) The name, address and telephone number of the person for which the refund payment is being requested.

- (c) Within ten (10) business days of receipt of a refund application, the director shall determine if it is complete. If the director determines the refund application is not complete, he or she will send a written statement specifying the deficiencies by mail to the person submitting the refund application. Unless the deficiencies are corrected, the director will take no further action on the refund application.
- (d) When the director determines the refund application is complete, the director will review it within thirty (30) days and approve the proposed refund if he or she determines that the city has not spent or encumbered an impact fee when required under subsection (a).
- (e) When the refund application is approved, the money will be returned, less any administrative charges paid to offset the city's costs of collection. A refund shall not include interest or investment income on the impact fee while in the city's possession. A person for which an impact fee refund is to be paid may be required to fill out and sign a W-9 or other appropriate federal taxpayer identification form as a condition of receiving the refund.
- (f) An impact fee payer may not retain the right to seek or collect a refund of an impact fee paid after the impact fee payer no longer owns fee simple title to the land for which the impact fee is paid. Only the then current owner of the land for which the impact fee was paid is entitled to seek and receive an impact fee refund that may be due.
- (g) Any requestor of an impact fee refund may appeal the director's decision regarding a refund application by filing with the director and the city clerk within ten (10) business days of the date of the director's decision a written notice of appeal along with a statement explaining the legal and factual basis of the appeal. The failure to timely file an appeal shall constitute a waiver of the right to appeal or challenge the decision. The city commission shall hold a de novo public hearing to consider the appeal and may affirm, affirm with conditions, or reverse the decision of the director. The city commission's determination constitutes a final decision for the city.

Sec. 59-12. Annual reporting and audits.

- (a) On an annual basis, a report to the city commission will be made on the following:
 - (1) The amount of impact fee revenues currently on account for which impact fees are collected;
 - (2) The amount and nature of any expenditure or encumbrance of impact fees since the prior annual report; and
 - (3) The amount and nature of any planned expenditures or encumbrances of impact fees prior to the next annual report.

(b) Audits of the city's financial statements, which are performed by a certified public accountant pursuant to § 218.39, Florida Statutes, as may be amended or transferred, 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 § 163.31801, Florida Statutes, as may be amended or transferred.

Sec. 59-13. Appeals.

(a) *Initiation.* A fee payer may appeal a final decision of the director made pursuant to any provision of this chapter to the city commission, by filing a written appeal with the city, within ten (10) business days of the decision. The appeal must include a written notice stating and specifying briefly the legal and factual grounds of the appeal. The city 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.

(b) *Record.* The record considered by the city commission will be the record of the application associated with the final decision being appealed and any other documents related to such decision.

(c) *Notice.* The city shall provide the applicant at least fifteen (15) calendar days' notice of the appeal before the city commission by mail or hand delivery.

(d) *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 director's alleged error on the decision, based on the record. To the extent relevant, the director will 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 director.

(e) *Standards.* To reverse a decision of the director, the city commission must 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 chapter. If the city commission reverses or modifies the decision, it must provide the director clear direction on the proper decision. In no case does the city commission have the authority to negotiate the amount of the impact fees or waive the impact fees otherwise specified in this chapter. The decision of city commission is final.

(f) *Form of decision.* The city commission's decision on the appeal must be in writing and include findings of fact and the application of those facts to the relevant standards.

Sec. 59-20. Multi-modal Transportation Impact Fee Schedule

(a) Multi-modal impact fee schedule. A multi-modal impact fee will be assessed and collected from new development pursuant to all applicable provisions of this chapter, in accordance with the following fee schedule:

Winter Park Multi-Modal Transportation Impact Fee Schedule

<u>ITE LUC</u>	<u>Land Use</u>	<u>Unit</u>	<u>Fee</u>
-	<u>Residential</u>	-	-
<u>210</u>	<u>Single Family (Detached): ≤ 1,200 sf</u>	<u>DU</u>	<u>\$6,425</u>
<u>210</u>	<u>Single Family (Detached): 1,201-2,000 sf</u>	<u>DU</u>	<u>\$8,218</u>
<u>210</u>	<u>Single Family (Detached): 2,001-3,500 sf</u>	<u>DU</u>	<u>\$10,163</u>
<u>210</u>	<u>Single Family (Detached): > 3,500 sf</u>	<u>DU</u>	<u>\$10,640</u>
<u>220</u>	<u>Multi-Family Housing/Townhouse (Low-Rise, 1-2 floors)</u>	<u>DU</u>	<u>\$5,937</u>
<u>221</u>	<u>Multi-Family Housing (Mid-Rise, 3-10 floors)</u>	<u>DU</u>	<u>\$4,395</u>
<u>222</u>	<u>Multi-Family Housing (High-Rise, > 10 floors)</u>	<u>DU</u>	<u>\$3,580</u>
<u>225</u>	<u>Student Housing (Adjacent to Campus)</u>	<u>Bedroom</u>	<u>\$1,246</u>
<u>225</u>	<u>Student Housing (Over 1/2 mile from Campus)</u>	<u>Bedroom</u>	<u>\$2,410</u>
<u>231</u>	<u>Mid-Rise Residential w/ first floor Commercial</u>	<u>DU</u>	<u>\$2,744</u>
<u>232</u>	<u>High-Rise Residential w/ first floor Commercial</u>	<u>DU</u>	<u>\$1,571</u>
<u>240</u>	<u>Mobile Home Park</u>	<u>DU</u>	<u>\$3,054</u>
<u>251</u>	<u>Senior Adult Housing - Detached (Retirement Community/Age-Restricted Single Family)</u>	<u>DU</u>	<u>\$2,975</u>
<u>252</u>	<u>Senior Adult Housing - Attached (Retirement Community/Age-Restricted Single Family)</u>	<u>DU</u>	<u>\$2,220</u>

<u>265</u>	<u>Time Share</u>	<u>DU</u>	<u>\$5,343</u>
-	<u>Lodging</u>	-	-
<u>310</u>	<u>Hotel/Tourist Hotel</u>	<u>Room</u>	<u>\$3,033</u>
<u>320</u>	<u>Motel</u>	<u>Room</u>	<u>\$1,440</u>
-	<u>Recreational</u>	-	-
<u>430</u>	<u>Golf Course</u>	<u>Acre</u>	<u>\$2,841</u>
<u>437</u>	<u>Bowling Alley</u>	<u>1,000 sf</u>	<u>\$7,993</u>
<u>444</u>	<u>Movie Theater w/ or w/out Matinee</u>	<u>1,000 sf</u>	<u>\$20,895</u>
<u>491</u>	<u>Racquet Club</u>	<u>1,000 sf</u>	<u>\$12,734</u>
<u>492</u>	<u>Health/Fitness Club</u>	<u>1,000 sf</u>	<u>\$22,428</u>
<u>N/A</u>	<u>Dance Studio (Martial Arts/Music Lessons)</u>	<u>1,000 sf</u>	<u>\$8,010</u>
-	<u>Institutional</u>	-	-
<u>522</u>	<u>School</u>	<u>1,000 sf</u>	<u>\$6,998</u>
<u>560</u>	<u>Public Assembly</u>	<u>1,000 sf</u>	<u>\$3,284</u>
<u>565</u>	<u>Day Care</u>	<u>1,000 sf</u>	<u>\$9,446</u>
-	<u>Medical</u>	-	-
<u>610</u>	<u>Hospital</u>	<u>Bed</u>	<u>\$15,641</u>
<u>620</u>	<u>Nursing Home</u>	<u>1,000 sf</u>	<u>\$1,899</u>
<u>640</u>	<u>Animal Hospital/Veterinary Clinic</u>	<u>1,000 sf</u>	<u>\$4,047</u>
-	<u>Office</u>	-	-
<u>710</u>	<u>General Office: ≤ 50,000 sf</u>	<u>1,000 sf</u>	<u>\$8,133</u>
<u>710</u>	<u>General Office: 50,001-100,000 sf</u>	<u>1,000 sf</u>	<u>\$7,953</u>
<u>710</u>	<u>General Office: 100,001-200,000 sf</u>	<u>1,000 sf</u>	<u>\$7,790</u>
<u>710</u>	<u>General Office: > 200,000 sf</u>	<u>1,000 sf</u>	<u>\$7,621</u>

<u>720</u>	<u>Small Medical/Dental Office:</u> <u>(≤ 10,000 sf)</u>	<u>1,000 sf</u>	<u>\$18,8</u> <u>72</u>
<u>720</u>	<u>Medical/Dental Office</u>	<u>1,000 sf</u>	<u>\$27,1</u> <u>01</u>
<u>732</u>	<u>Post Office</u>	<u>1,000 sf</u>	<u>\$42,2</u> <u>02</u>
<u>Retail</u>			
<u>815</u>	<u>Free-Standing Discount Store</u>	<u>1,000 sf</u>	<u>\$11,1</u> <u>05</u>
<u>816</u>	<u>Hardware/Paint</u>	<u>1,000 sf</u>	<u>\$1,07</u> <u>9</u>
<u>820</u>	<u>Retail:</u> <u>≤ 50,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$10,0</u> <u>51</u>
<u>820</u>	<u>Retail:</u> <u>50,001-100,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$11,0</u> <u>52</u>
<u>820</u>	<u>Retail:</u> <u>100,001-200,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$10,0</u> <u>52</u>
<u>820</u>	<u>Retail:</u> <u>200,001-300,00 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$9,85</u> <u>2</u>
<u>820</u>	<u>Retail:</u> <u>300,001-400,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$9,67</u> <u>6</u>
<u>820</u>	<u>Retail:</u> <u>400,001-500,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$9,66</u> <u>7</u>
<u>820</u>	<u>Retail:</u> <u>500,000-1,000,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$10,2</u> <u>44</u>
<u>820</u>	<u>Retail:</u> <u>1,000,001-1,200,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$10,4</u> <u>76</u>
<u>820</u>	<u>Retail:</u> <u>> 1,200,000 sf gla</u>	<u>1,000</u> <u>sf gla</u>	<u>\$10,7</u> <u>70</u>
<u>840</u> <u>/</u> <u>841</u>	<u>New/Used Auto Sales</u>	<u>1,000 sf</u>	<u>\$11,8</u> <u>75</u>
<u>850</u>	<u>Supermarket</u>	<u>1,000 sf</u>	<u>\$16,0</u> <u>70</u>
<u>853</u>	<u>Convenience Market w/ Gas</u> <u>Pumps</u>	<u>1,000 sf</u>	<u>\$33,8</u> <u>99</u>
<u>862</u>	<u>Home Improvement</u> <u>Superstore</u>	<u>1,000 sf</u>	<u>\$6,35</u> <u>9</u>
<u>863</u>	<u>Electronics Superstore</u>	<u>1,000 sf</u>	<u>\$5,42</u> <u>7</u>
<u>880</u> <u>/</u> <u>881</u>	<u>Drug Store</u>	<u>1,000 sf</u>	<u>\$8,91</u> <u>6</u>
<u>Services</u>			
<u>911</u>	<u>Bank/Savings Walk-In</u>	<u>1,000 sf</u>	<u>\$8,40</u> <u>4</u>

<u>912</u>	<u>Bank/Savings Drive-In</u>	<u>1,000 sf</u>	<u>\$14,868</u>
<u>925</u>	<u>Drinking Place</u>	<u>1,000 sf</u>	<u>\$15,293</u>
<u>931</u>	<u>Quality Restaurant</u>	<u>1,000 sf</u>	<u>\$27,456</u>
<u>932</u>	<u>High-Turnover Restaurant</u>	<u>1,000 sf</u>	<u>\$31,605</u>
<u>934</u>	<u>Fast Food Restaurant w/ Drive Thru</u>	<u>1,000 sf</u>	<u>\$74,592</u>
<u>942</u>	<u>Auto Service</u>	<u>1,000 sf</u>	<u>\$9,708</u>
<u>944</u>	<u>Gas Station w/ or w/out Convenience Market: < 2,000 sf</u>	<u>Fuel Pos.</u>	<u>\$9,799</u>
<u>945</u>	<u>Gas Station w/ or w/out Convenience Market: 2,000-2,999 sf</u>	<u>Fuel Pos.</u>	<u>\$11,709</u>
<u>960</u>	<u>Gas Station w/ Convenience Market: ≥ 3,000 sf</u>	<u>Fuel Pos.</u>	<u>\$13,136</u>
<u>947</u>	<u>Self-Service Car Wash</u>	<u>Wash Station</u>	<u>\$20,980</u>
<u>Industrial</u>			
<u>110</u>	<u>General Light Industrial</u>	<u>1,000 sf</u>	<u>\$3,117</u>
<u>140</u>	<u>Manufacturing</u>	<u>1,000 sf</u>	<u>\$2,447</u>
<u>150</u>	<u>Warehousing</u>	<u>1,000 sf</u>	<u>\$1,050</u>
<u>151</u>	<u>Mini-Warehouse</u>	<u>1,000 sf</u>	<u>\$578</u>
<u>154</u>	<u>High-Cube Transload and Short-Term Storage Warehouse</u>	<u>1,000 sf</u>	<u>\$839</u>

(b) In the event an applicant for building permit contends that the land use for which the building permit is proposed is not within the above categories, the director will make a determination as to the appropriate land use designation for charging the impact fee. The director's determination as to the appropriate land use designation may be appealed to the city commission.

Section 3. Codification. Section 2 of this Ordinance will be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and similar or like errors may be corrected, and

additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other Ordinance or provision of law, this Ordinance governs and controls to the extent of any such conflict.

Section 6. Directions to City Staff. City Staff under the direction of the City Manager are directed and authorized to take such actions as are necessary and advisable to effect and carry out this Ordinance.

Section 7. Effective Dates. This Ordinance shall become effective on January 1, 2022 after its adoption by the City Commission of the City of Winter Park, Florida.

First Reading held on November 10, 2021

Second Reading held on December 8, 2021

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 8th day of December, 2021.

Mayor Phillip M. Anderson

ATTEST:

Rene Cranis, City Clerk