



COUNTY ATTORNEY'S OFFICE
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Adolphus Thompson
William Turner

Legal Administrative Supervisor
Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP
Gail Stanford

MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Georgiana Holmes, Assistant County Attorney *GH*
Contact: (407) 836-7320

DATE: December 3, 2018

RE: **Consent Agenda Item for the Board Meeting on December 18, 2018 Proposed New Administrative Regulation titled "Water Quality Capital Projects Prioritization"**

Attached for your review is a proposed new Administrative Regulation.

I. EXPLANATION & SUMMARY OF PROPOSED REGULATION:

The attached regulation was reviewed in depth and revisions were made to ensure that the regulation is consistent with current practices and procedures.

It is our intent to place the proposed new regulation on the December 18, 2018, Consent Agenda for approval by the Board of County Commissioners. Please advise of any questions, comments, or modifications you may wish to make prior to that meeting.

II. ACTION REQUESTED:


Approval of proposed new Administrative Regulation, titled
"Water Quality Capital Projects Prioritization"

AMC
Attachment

c: Ajit Lalchandani, County Administrator
Eric Gassman, Chief Accountability Officer
Joel D. Prinsell, Deputy County Attorney

NEW ADMIN REG

11/07/18

| | |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------|
|  ORANGE COUNTY ADMINISTRATIVE REGULATIONS | No.: NEW |
| | Date: |
| | Approved By: |
| Title: WATER QUALITY CAPITAL PROJECTS PRIORITIZATION | Page 1 of 2 |

I. POLICY

In order to improve water quality and maintain compliance with the state of Florida regulations governing surface water quality standards (62-302, F.A.C.), identification of impaired surface waters (62-303, F.A.C.), and Total Maximum Daily Loads (62-304, F.A.C.); Basin Management Action Plans (BMAPs); and the County's National Pollutant Discharge Elimination System (NPDES) Permit issued by the Florida Department of Environmental Protection, it is the policy of Orange County, through Comprehensive Policy Plan Conservation Element Objective to monitor the waters of the county and implement capital projects to address pollution sources. Priority of the projects is based on risk assessment of the waters of the county for further degradation in water quality and regulatory requirements. All projects will be evaluated using the best scientific information available.

II. PROCEDURES

- A. The Environmental Protection Division (EPD) must evaluate all potential water quality capital improvement projects for waterbodies identified annually using a ranking matrix that includes, at a minimum: risk of degradation, regulatory status, regulatory timeframes, external funding, cost-benefit analysis, and inter-agency partnerships.
- B. Projects identified outside the office of EPD shall be submitted to EPD prior to the next budget cycle to allow time for evaluation.
- C. EPD, through the annual budget process and approval, shall identify water quality capital improvement projects for submittal, which may include projects in any or all of the following phases:
 - a. Assessment: Waterbodies with declining water quality or at risk for declining water quality shall be studied to determine pollution sources.



ORANGE COUNTY ADMINISTRATIVE REGULATIONS

No.: NEW

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- The assessment shall also identify potential projects that will mitigate pollution sources.
- b. Feasibility Evaluation: Determine if projects can be built as identified in the assessment and the anticipated cost-benefit analysis.
 - c. Design & Engineering: Develop engineered plans for construction.
 - d. Construction: Build and implement designed projects.
 - e. Monitoring: Depending on the project, monitoring may be required to provide pollutant removal efficiency data.
- D. The Board of County Commissioners approves the list of water quality capital improvement projects through the annual budget process after considering input provided by the Environmental Protection Division, County Administration, and the Office of Management and Budget.

FOR MORE INFORMATION CONTACT: Environmental Protection Division, Office of Management and Budget

REFERENCE: Admin Policy 6.02.01 General Capital Budget;
Comp Plan Conservation Element Objective
C1.2 and C1.11; NPDES Permit FLS000011



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ADMINISTRATIVE REGULATIONS

CHANGE 44

MEMORANDUM

To: All Administrative Regulations
From: Anna M. Caban, Legal Administrative Supervisor
County Attorney's Office 
Date: December 21, 2018
Subject: New Administrative Regulation 4.09

The following listed and attached revisions and corrections are forwarded to you for inclusion in Orange County's Administrative Regulations:

- Attachment 1: Revised Table of Contents and Index, prepared to properly reflect all revisions to date.
- Attachment 2: New Administrative Regulations 4.09, titled "Water Quality Capital Projects Prioritization"

Please insert the updated Table of Contents and revised Administrative Regulations in your copy of the Orange County Administrative Regulations.



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* Refer to Orange County Policy Manual



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S:\Official\REV 2006 REVISION\ADMINREG

COMMUNITY, ENVIRONMENTAL, & DEVELOPMENT SERVICES

4.01 IMPACT FEES

I. POLICY:

Chapter 23 of the Orange County Code, entitled "Impact Fees," provides definitions and establishes procedures regarding impact fees for Law Enforcement, Fire/Rescue Services, Transportation, Schools, and Parks and Recreation. Provisions are included for the collection, allocation, adjustment, credits, exemptions, discounts, and refunds of impact fees. As a mechanism and forum to address the various issues related to impact fees, Orange County hereby establishes an Impact Fee Committee ("IFC").

II. PROCEDURES:

A. The IFC membership shall consist of the following persons or their designees:

1. Chairperson to be appointed by the County Administrator or a designee;
2. Manager of the Traffic Engineering Division;
3. Manager of the Planning Division;
4. Manager of the Transportation Planning Division;
5. Manager of the Fiscal and Operational Support Division of the Community, Environmental, and Development Services Department.

An attorney from the County Attorney's Office shall act as legal counsel to the IFC, shall attend the IFC meetings, and shall assist the IFC in the performance of its responsibilities. When addressing matters relating to non-transportation impact fees, a representative from the corresponding county entity shall be invited to attend and participate.

The IFC shall meet on an agreed-upon day twice every month, unless no matters are to be heard, and may also meet on an as-needed basis at the discretion of its Chairperson. The IFC shall annually elect from within its voting membership a vice-chairperson to serve as the chair in the absence of the chairperson. In the absence of both the Chairperson and the Vice Chairperson, if a quorum is present, the

coordinator shall call for election of a presiding officer. The presiding officer shall preside over that meeting or until the Chairperson or Vice Chairperson arrives. The presiding officer shall relinquish the chair upon the arrival of either the Chairperson or the Vice Chairperson upon conclusion of the business immediately before the committee.

B. The responsibilities of the IFC are as follows:

1. Advise Orange County generally regarding impact fee issues.
2. Review, and approve or deny, alternative impact fee methodologies and studies.
3. Review agreements relating to alternative impact fee studies, and recommend approval or denial by the Board of County Commissioners ("BCC").
4. Maintain a single, comprehensive database for all alternative studies submitted, approved, and/or denied in Orange County.
5. Conduct alternative study audits.
6. Complete a staff report for each alternative impact fee study prior to its submittal to the BCC. At a minimum, the staff report must summarize report findings; identify any fiscal implications; and compare any proposed impact fees to current county standards.
7. Hear appeals of staff determinations regarding impact fee exemptions, refunds, or discounts.
8. Oversee all other issues related to maintaining an appropriate system of monitoring and compliance for all aspects of alternative impact fees.
9. Hear appeals from denials of "good faith" refunds pursuant to Sec. 23-95(h), Orange County Code.
10. Issue annual reports that summarize all of the IFC's activities. The annual reports will be submitted to the Board of County Commissioners.
11. Address other impact fee issues, as appropriate.

C. For items requiring approval by the Board of County Commissioners ("BCC"), following approval by the IFC, an applicant shall request

placement on a BCC consent agenda. Upon confirmation that applicant has previously paid the non-refundable processing fee, pursuant to the established fee schedule as adopted and amended from time to time by the BCC for such items, and any other applicable fees, such as monitoring fees, the Public Works Department will schedule the matter with the Clerk of the BCC, and the applicant will be given written notice of the time and place for BCC consideration.

D. If the applicant disagrees with the IFC's written opinion, then within fourteen (14) days of such decision the applicant may submit a written appeal to the Chair of the Development Review Committee ("DRC"), upon payment of a non-refundable processing fee pursuant to the established fee schedule as adopted and amended from time to time by the BCC for such appeals. The DRC may grant the appeal, deny the appeal, or request additional information to make its determination. Decisions of the DRC may be appealed to the BCC upon payment of a non-refundable processing fee pursuant to the established fee schedule as adopted and amended from time to time by the BCC for such appeals. The processing fees must be made payable to the "Orange County Board of County Commissioners." A receipt for the processing fee must accompany all requests for public hearings before the BCC.

FOR MORE INFORMATION CONTACT: Public Works Department; Traffic Engineering Division; Community, Environmental, and Development Services Department, Fiscal and Operational Support Division
REFERENCE: Chapter 23, Article IV, Orange County Code; Orange County Fee Directory Section 3
APPROVED: 2/23/10
Revised: 04/21/15

4.02 ALTERNATIVE IMPACT FEES

I. POLICY:

Section 23-93 of the Orange County Code provides in pertinent part that if an applicant believes that the cost of off-site improvements needed to serve a proposed development is less than the fee established in Section 23-92, the applicant may, at his/her own expense, submit an alternative fee calculation to the County Administrator or designee. The alternative fee calculation must be submitted prior to issuance of any building permit and must be approved by the BCC prior to issuance of any certificate of occupancy, temporary

or permanent. For purposes of administering such portion of the Orange County Code, the Board of County Commissioners ("BCC") hereby defines (i) the term "submitted" (prior to issuance of any building permit) as formal approval by the Impact Fee Committee, as defined in Administrative Regulation 4.01, of a proposed methodology, impact fee calculation, and Impact Fee Agreement and (ii) the term "any certificate of occupancy, temporary or permanent" as any certificate of occupancy issued for the project for which the alternative study is submitted. In all other respects, the County Administrator has directed the Orange County Traffic Engineering Division to act as designee in this matter.

Section 23-93(c) of the Orange County Code states, "The alternative impact fee calculations shall be based on data, information, or assumptions contained in this article or independent sources, provided that:

A. The independent source is a county-accepted source of transportation engineering or planning data or information; or

B. The independent source is a local study carried out pursuant to an accepted methodology which studies the four (4) variables of ADT, %NT, ATL, and LADF."

The four variables referenced above are defined in Section 23-93 of the Code as:

- ADT: The average daily trip generation rate in vehicle-trips/day;
- %NT: Percent of new or primary trips, as opposed to pass-by or diverted-linked trips;
- ATL: Assessable trip length;
- LADF: Percent of ATL occurring on interstate highways or toll facilities, excluding traffic that does not have an origin or destination in the county.

For purposes of this section, a local study is one which is conducted within Orange County. If an applicant demonstrates, to the satisfaction of the Traffic Engineering Division, that no appropriate study site exists in Orange County, then a study site outside of Orange County may be approved by the Impact Fee Committee (defined below.)

II. PROCEDURES

A. Alternative impact fee studies submitted pursuant to Chapter 23, Article IV of the Orange County Code and the provisions of this Administrative Regulation shall be reviewed by the Impact Fee Committee (IFC), as defined in Administrative Regulation 4.01.

B. A person who opts to conduct an alternative study must contact the Traffic Engineering Division to schedule a pre-application meeting. At this meeting, Traffic Engineering Division staff will cover the basic requirements associated with such a study. Subsequent to this meeting, the applicant is required to submit documentation regarding the site(s) and methodology which they plan to study. The following criteria must be addressed in this documentation:

1. The site(s) to be studied must be identified. A minimum of one (1) site must be studied. At the sole discretion of the County, the applicant may have the option to study additional locations and base the findings on a weighted average. Each site description must include the type of location (e.g., urban, suburban, rural), the setting (physical parcel identification), hours of operation, occupancy during monitoring period, length of time in existence / active operation, and all uses (size and type).

2. The applicant must provide a detailed explanation regarding how the site(s) being studied is sufficiently similar to the proposed project. Specifically, the applicant shall address land use, adjacent area, and demographic/marketing characteristics of potential customers/buyers.

3. A map of the project with the project entrances clearly identified must be included. To the greatest extent possible, projects that share driveways with adjacent developments should be avoided.

4. The proposed dates of the counts/interviews must be included in the methodology.

5. The methodology for achieving an adequate level of statistical significance is required. For purposes of conducting an alternative impact fee study, a statistical confidence level of 95% and a confidence interval of +/- 10% are required except that, upon proof of sufficient justification, the IFC may approve a confidence interval of other than +/- 10%. The applicant should estimate the number of interviews needed to achieve this level prior to the

study, and provide verification that the level was met after the study. A minimum of five (5) consecutive days of (i) interviews from 2 P.M. to 6 P.M. and (ii) twenty-four (24) hour machine and/or manual counts is required. Depending on the land use, the County may require that the five (5) days of interviews be conducted during a time period other than from 2 P.M. to 6 P.M. (for example, the County may require that interviews for a restaurant be conducted from 4 P.M. to 8 P.M.). The driver of at least 25% of all vehicles entering the site must be interviewed; the interview percentage (25% or more) must be validated by machine and/or manual counts and must provide precise, reliable data, as determined by the Traffic Engineering Division. Although applicants, at their discretion, may count/interview for longer periods of time, the interviews/counts must be on approved consecutive days. Also, if the applicant opts to conduct further interviews, the interviewing must contain equal periods of peak and off-peak traffic activity. County staff may visit the study site at random intervals to assure compliance with the approved methodology.

6. If the applicant is unable to complete a full five (5) consecutive days of interviews/counts, written justification shall be submitted to the Traffic Engineering Division. The County, at its sole discretion, after review of the written justification, may allow the applicant to complete the missing days of interviews/counts at a later date agreed upon by both the County and the applicant. The County will notify the applicant of its decision within five (5) working days of submittal of the written justification. The location where interviews are to be taken is dependent upon the type of development. In general, surveys/interviews should be conducted at the entrance of the development. Manual counts shall be conducted at project driveways to calibrate machine counts. These counts should be taken during the same hours as the interviews.

C. Requests for transfers of alternative impact fee studies to other sites shall comply with Section 23-93(d) of the Orange County Code, in addition to the provisions of this Administrative Regulation.

D. The proposed methodology shall be delivered to the Traffic Engineering Division. If the Traffic Engineering Division confirms the validity of the methodology, the applicant shall appear before the IFC to seek approval of that methodology. Upon IFC approval, the applicant will receive written notification

to proceed with the study. In the event that the Traffic Engineering Division or the IFC disagrees with the proposed methodology, areas of disagreement will be identified for the applicant, and the applicant will receive written notification of the staff's comments. Prior to commencing work on the traffic counts/interviews, it is strongly recommended that the applicant receive approval of the methodology from both Traffic Engineering and the IFC. Failure to obtain such approval may result in rejection of study results.

E. Information derived from the applicant's study will be used to calculate an alternative impact fee according to the alternative impact fee formula found in Chapter 23 of the Orange County Code (or any successor provisions).

F. Upon receiving IFC approval of the methodology, the applicant may initiate the counts/interviews. The results of the study and supporting documentation must be incorporated into a written report. Although the study results may be summarized for the entire period studied, the results for each day must be clearly documented. Upon the completion of the study, the applicant shall provide the Traffic Engineering Division with three (3) copies of the final report. No studies will be accepted unless they are certified by an engineer registered in the State of Florida.

G. The Traffic Engineering Division shall review the finalized study to determine whether it contains sufficient information for the IFC to consider a recommendation of an alternative impact fee. Only after such sufficiency is established, an applicant wishing to pay said alternative fee shall appear before the IFC and shall enter into a developer's agreement with Orange County to implement the alternative impact fee calculation validated by the study. The developer's agreement will be reviewed by the County Attorney's Office and must be approved by the BCC before the applicant is entitled to the impact fee rate(s) determined by the alternative study. Upon the final execution of the developer's agreement and upon approval by the BCC, the Traffic Engineering Division, on behalf of the IFC, will provide the applicant with an original of the approved, recorded agreement. An applicant is not entitled to pay impact fees at the rate(s) determined by the alternative study until the applicant receives the approved, recorded agreement. A copy of the IFC's response will also be forwarded to the Community, Environmental, and Development Services Department's Fiscal and Operational Support Division.

III. APPEAL.

If the applicant disagrees with the IFC's written opinion, the applicant may appeal, as provided for in Section 23-92(f) of the Orange County Code and Orange County Administrative Regulation 4.01.

IV. APPROVAL.

A. Upon receiving a request for placement on a BCC agenda for an IFC-approved agreement, and upon confirmation that the applicant has previously paid the monitoring fee and applicable non-refundable processing fee, the Public Works Department will schedule the matter for BCC approval, in accordance with the procedures set out in Orange County Administrative Regulation 4.01. The BCC shall consider the relevant data and/or study presented by the applicant and shall review the IFC's (and if applicable, the DRC's) written opinion(s). The BCC shall make a final determination of whether to grant or deny the alternative impact fee request and enter into the agreement.

B. If the alternative impact fee request is granted, a follow-up review to confirm the approved assumptions in the study shall be conducted in accordance with Chapter 23, Orange County Code. Impact fees not previously accounted for in the study shall be paid, at the rate in effect at the time of issuance of the building permit, within thirty (30) days of a demand letter issued by Orange County.

FOR MORE INFORMATION CONTACT: Public Works, Traffic Engineering Division; Environmental, and Development Services Department, Fiscal and Operational Support Division
REFERENCE: Chapter 23, Orange County Code; Orange County Fee Directory Section 3

APPROVED: 6/27/06

REVISED: 6/05/15

4.03 ROAD IMPACT FEE CREDITS AND ROADWAY AGREEMENTS

I. POLICY

Section 23-95 of the Orange County Code states in pertinent part that "An applicant shall be entitled to a credit against any road impact fee assessed pursuant to this article in an amount equal to the cost of off-site improvements (including on-site arterial roads, but not including on-site collector roads) or contributions of

land, money or services for off-site improvements (including on-site arterial roads, but not including on-site collector roads) contributed or previously contributed, paid for or committed to by the applicant or his predecessor in interest as a condition of any development permit issued by the county.”

An applicant must enter into an agreement with the County to receive such road impact fee credits. In addition, from time to time, applicants may wish to enter into agreements with the County for conveyance of right-of-way to the County or for design and construction and conveyance to the County of new or improved roadways. Such agreements may or may not involve impact fee credits.

II. PROCEDURES

A. Road impact fee credit requests submitted pursuant to Section 23-95 of the Orange County Code and the provisions of this Administrative Regulation shall be reviewed by a Roadway Agreement Committee (RAC). The RAC Membership shall consist of the following persons or their designees:

1. Manager of Development
Engineering Division
2. Manager of Traffic
Engineering Division
3. Manager of Transportation
Planning Division
4. Manager of Planning
Division
5. Director of Growth
Management Department
6. Manager of Public Works
Engineering Division
7. Manager of Real Estate
Management Division

An attorney from the County Attorney’s Office shall act as legal counsel to the RAC, shall attend the RAC meetings and shall assist the RAC in performance of its responsibilities.

The RAC shall meet, as needed, on an agreed-upon days twice each month. The County Administrator shall designate one of the members of the RAC to serve as chairperson. The RAC shall annually elect from within its voting membership a vice-chairperson to serve as the chair of the RAC in the absence of the chairperson. The RAC may also meet on an as-needed basis at the discretion of its chairperson.

B. Requests for agreements pertaining to rights-of-way or roadways which do not involve road impact fee credits, but which otherwise potentially further the interests of the County, may also be reviewed and negotiated by the RAC.

C. The responsibilities of the RAC are as follows:

1. Evaluate all roadway and right-of-way agreement requests submitted to the RAC based on compliance with applicable Orange County Code provisions, the Orange County Comprehensive Policy Plan, consistency with past practice, need, technical requirements, financial implications, and other issues as appropriate;

2. Document its findings in a written staff report which must be submitted with the proposed agreement or request to the Board of County Commissioners. Such report shall indicate whether the improvement or right-of-way that is the subject of the proposed agreement or request is included in the Capital Improvements Program, the Comprehensive Policy Plan, or the Metroplan Orlando Long-Range Plan;

3. Review and negotiate all road impact fee credit, right-of-way, and roadway agreements submitted to RAC to ensure that the County’s interests are adequately addressed;

4. Maintain a comprehensive, single database of all approved road impact fee credits, right-of-way, and roadway agreements submitted to the Board of County Commissioners by the RAC ; and

5. Issue an annual report that summarizes all of its activities for the previous twelve-month period. This report will be presented to the Board of County Commissioners.

D. All road impact fee credit requests must be consistent with the provisions of Chapter 23, Article IV, Section 23-95 of the Orange County Code. Fifteen (15) copies of the written road impact fee credit request must be submitted to the Transportation Planning Division. The supporting documentation required by Sec. 23-95 must also be included, in addition to an indication of whether the road for which credits are requested is included in the Capital Improvements Program, the Comprehensive Policy Plan or the Metroplan Orlando Long-Range Plan. The

Transportation Planning Division will distribute these reports to the RAC upon receipt. If the credit request does not provide sufficient information to warrant further review, the Transportation Planning Division will request the applicant to provide the necessary information. Upon establishing sufficiency of information in the credit request, the Transportation Planning Division will make its recommendation to the RAC within 6 weeks. RAC members will submit written comments to the chairperson, who will compile the comments into a consolidated report to be discussed and reviewed at an RAC meeting. The RAC's written opinion will be forwarded to the applicant by the Transportation Planning Division.

E. All other roadway and right-of-way agreement requests shall require supporting documentation to be submitted to the Transportation Planning Division to include an indication whether the roadway or right-of-way is in the Capital Improvements Program, the Comprehensive Policy Plan or the Metroplan Orlando Long-Range Plan. If the request does not provide sufficient information to warrant further review, the Transportation Planning Division will request the applicant to provide the necessary information. Once the Transportation Planning Division has determined the information is sufficient, it will submit the roadway or right-of-way agreement request to the RAC within 6 weeks. RAC members will submit written comments to the chairperson, who will compile the comments into a consolidated report to be discussed and reviewed at an RAC meeting. The RAC's written recommendation will be forwarded to the applicant by the Transportation Planning Division.

F. If the road impact fee credit, roadway or right-of-way agreement request is approved by the RAC, the applicant will be required to enter into an agreement with Orange County to finalize the conditions of the approval. The agreement may be drafted by and shall be reviewed by the County Attorney's Office. The RAC chairperson will provide copies of the agreement to RAC members, who will submit written comments to the chairperson, who will compile the comments into a consolidated report to be discussed and reviewed at an RAC meeting. The agreement (including all exhibits) must be complete before the RAC approves the agreement. Proof of ownership must be submitted to the Transportation Planning Division before the agreement is submitted to the Board of County Commissioners. The agreement must be approved by the Board of County Commissioners before the applicant is entitled to obtain

building permits utilizing the credit account, when applicable. Upon the final execution of the agreement and upon approval by the Board of County Commissioners, the Transportation Planning Division, on behalf of the RAC, will provide the applicant with a final written approval of the road impact fee credit, roadway or right-of-way agreement request. In the case of a road impact fee credit agreement, the credit account may not be used to pay the road impact fee due on building permits until the applicant received final written approval of the road impact fee agreement by the Board of County Commissioners and all conditions of the agreement are met. A copy of the RAC's response noting the approval of the road impact fee credit agreement by the Board of County Commissioners will also be forwarded to the Building Division so that the new road impact fee credit account may be established and monitored by Building Division staff.

G. If the applicant disagrees with the RAC's written opinion, the applicant may appeal its determination to the Development Review Committee (DRC). If the applicant also disagrees with the DRC's opinion, he/she may request a public hearing before the Board of County Commissioners. There is a non-refundable processing fee for all appeals to the Board of County Commissioners. Applicants should refer to the Orange County Fee Directory for the applicable fee. A receipt of payment must accompany all requests for public hearings. Upon receiving the public hearing request, the Transportation Planning Division will schedule the public hearing with the Clerk to the Board of County Commissioners. The applicant will be notified of the time and place of the public hearing in writing.

H. At the public hearing, the Board of County Commissioners shall consider the relevant data and/or study presented by the applicant and shall review the RAC's written opinion. The Board of County Commissioners shall make a final determination of whether to grant or deny the road impact fee credit or roadway agreement request.

FOR MORE INFORMATION CONTACT: County Administrator's Office; Transportation Planning Division
REFERENCE: Ch. 23, Article IV, Section 23-92 through 23-95, Orange County Code; Administrative Regulation 6.11.01; Orange County Fee Directory, Section 3-41 through 42
APPROVED: 6/27/06

4.04 CONCURRENCY MANAGEMENT AND PROPORTIONATE FAIR-SHARE AGREEMENTS

I. POLICY

Chapter 30, Article XII, Concurrency Management, implements the concurrency requirements of Section 163.3180, Florida Statutes, and the provisions of the Comprehensive Policy Plan (CPP) relating to concurrency. Sections 30-620 through 30-624, Orange County Code, provides that an applicant whose application for a capacity encumbrance letter has been denied, because of a lack of capacity for one or more public facilities, may appeal such denial. In addition, Sections 30-620 through 30-624 provide a process by which an applicant whose application for a capacity encumbrance letter has been denied may proceed despite the lack of capacity through a mitigation plan, or (for transportation facilities only) by entering into a proportionate fair-share agreement.

II. PROCEDURES

A. The Concurrency Review Committee (CRC) is established as a staff committee to assist the Concurrency Management Official in administering the Concurrency Management System, and to review and approve certain concurrency-related agreements as provided in Chapter 30, Article XII, Concurrency Management. The CRC membership shall consist of the following persons or their designees:

1. Manager of Public Works Transportation Planning Division
2. Manager of Public Works Engineering Division
3. Manager of Public Works Traffic Engineering Division
4. Manager of Planning Division
5. Manager of Office of Management and Budget Division
6. Manager of Growth Management Fiscal and Administration Division

The County Administrator or his/her designee shall designate one additional voting member to serve as chairperson of the CRC. The CRC shall annually elect

from within its voting membership a vice-chairperson to serve as chair in the absence of the chairperson.

An attorney from the County Attorney's Office shall act as legal counsel to the CRC, shall attend CRC meetings, and shall assist the CRC in the performance of its responsibilities.

The CRC shall meet, as needed, on an agreed-upon day twice each month. The CRC may also meet on an as-needed basis at the discretion of its chairperson.

B. The responsibilities of the CRC areas follows:

1. The CRC will hold pre-application meetings for applicants whose applications for capacity encumbrance letters have been denied. Advise applicants of their options, which include being placed on a waiting list, proposing a mitigation plan to address the project's impacts on the failing facility or facilities, or (for transportation concurrency only) entering into a proportionate fair-share agreement pursuant to sections 30-620 through 30-623. The CRC will refer applicants choosing the mitigation plan option to the Road Agreement Committee.

2. Certain projects will require the applicant to submit a traffic study prepared by the applicant's consultant. For other projects, County staff may conduct the traffic study. During the pre-application meeting, the CRC will advise the applicant if a traffic study conducted by a consultant is required.

3. The CRC shall review all traffic studies conducted by a consultant, and shall review all traffic studies conducted by County staff that deviate from the traffic study requirements. All such studies must be approved by the CRC.

4. The CRC shall review all applications for the expedited proportionate fair-share process, and shall review all traffic studies supporting such applications. All expedited proportionate fair-share agreements must be approved by the CRC and shall be executed by the chairperson of the CRC.

5. The CRC shall review any request for an extension of a capacity reservation certificate notwithstanding the existence of a waiting list. The CRC may grant such extensions in the following circumstances:

a. When the applicant has demonstrated that the development is proceeding in good faith, the CRC may grant an extension for a period of time sufficient to allow the applicant to complete the development. Failure of the development to proceed in good faith shall be grounds for the CRC to terminate the extension after thirty (30) days written notice of intent to terminate has been given to the applicant.

b. When the county has delayed progress on the applicant's development through no fault of the applicant, the CRC may grant an extension for a period of time sufficient to allow the applicant to complete the development. Following the granting of such an extension, failure of the development to proceed in good faith shall be grounds for the CRC to terminate the extension after thirty (30) days written notice of intent to terminate has been given to the applicant.

c. When the applicant has been required to execute a capacity enhancement agreement with the School Board of Orange County, and the terms of that agreement result in the delay of the development (through no fault of the applicant), the CRC may grant an extension for a period of time sufficient to allow the applicant to complete the development. Following the granting of such an extension, failure of the development to proceed in good faith shall be grounds for the CRC to terminate the extension after thirty (30) days written notice of intent to terminate has been given to the applicant.

C. A traffic study shall include the following:

1. *Summary.* Project name, project location (including location map and parcel identification number), applicant contact information, parcel owner information (if different than applicant), proof of ownership of parcel(s).

2. *Proposed Development.* Proposed use for the property by land use category and amount of development.

3. *Area of Influence.* The impact area for purposes of evaluating concurrency shall be all road segments within a one (1) mile radius of the project if project site is located within the urban area as determined by the board of county commissioners. The impact area for purposes of evaluating concurrency shall be all road segments within a two and one half (2

1/2) mile radius of the project if project site is located within the rural area as determined by the board of county commissioners. The radius shall be measured "as the crow flies" from the perimeter of the project. In some instances, certain natural or man-made physical barriers (i.e., lakes, wetlands, limited-access highways) may prevent traffic from reaching certain road segments within the one mile or two and one half mile radius from the project, and it may be justified to calculate certain impact areas by driving distance. Such calculations may be permitted on a case-by-case basis with sufficient documentation and justification, with review and approval by the CRC. This type of calculation is considered to be "Special Analysis."

4. *Proposed Project Traffic.* Traffic to be generated by the proposed development by land use category and amount of development.

a. *Trip Generation.* Trip generation rates shall be based on the latest edition of *Institute of Traffic Engineers Trip Generation Manual* (ITE Trip Generation Manual) or a county-approved trip generation study. All generated trips shall be assumed to be external, unless documented.

b. *Trip Distribution.* Trip distribution shall be performed to allocate trips to origin and destination land use areas external to the site and may be performed manually or using an appropriate transportation model such as FSUTMS. The assumptions use to allocate trips on the network shall be documented in the traffic study.

c. *Trip Assignment.* Trip assignment may be performed manually or using FSUTMS or a comparable county-approved model. If the manual method is used, the assignment may be done concurrently with distribution. The assignment process shall be based on a review of the land uses within the area of influence. All assumptions shall be documented in the traffic study.

5. *Available Capacity.* Roadway capacity as reported in the Concurrency Database, which is based on Generalized Level of Service Tables as found in the latest edition of *FDOT Quality Level of Service Manual*, or approved LOS computation tools such as an ART-Plan or High-Plan Analysis.

6. *Special Analysis.* Any deviation from the traffic study requirements must be supported by documented justification and must be approved by the

Concurrency Review Committee. If a proportionate fair-share agreement is based on a traffic study using Special Analysis, it shall be noted in the staff report to the BCC accompanying the agreement.

D. Ten (10) copies of the proposed traffic study methodology, traffic study, request for extension of capacity reservation certificate, proportionate fair-share agreement, etc. and the appropriate application shall be delivered to the Transportation Planning Division three weeks prior to the CRC meeting at which the applicant's request is scheduled to be discussed. All copies shall be stamped with a "Received by" date. Copies will be distributed to CRC members, and members must submit written comments to the chairperson no later than one week prior to the scheduled CRC meeting. The chairperson will compile the members' comments into a consolidated report, which will be reviewed and discussed at the scheduled meeting.

E. If the CRC, through discussion at the scheduled meeting, requires amendments or revisions to the proposed traffic study methodology, traffic study, request for extension of capacity reservation certificate, proportionate fair-share agreement, etc., the applicant shall resubmit the revised documents to the Transportation Planning Division for further review by the CRC.

F. Once the CRC has approved a proposed traffic study methodology, traffic study, request for extension of capacity reservation certificate, proportionate fair-share agreement, etc., the approved document shall be stamped with an "Approved by CRC on" date stamp. In the case of an agreement, a final approved draft may be stamped.

G. The chairperson of the CRC shall submit proportionate fair-share agreements to the Board of County Commissioners for approval, with the exception of those proportionate fair-share agreements approved under the expedited process.

FOR MORE INFORMATION CONTACT: County Administrator's Office; Transportation Planning Division
REFERENCE: Ch. 30, Article XII; Section 163.3180, Florida Statutes; Sections 30-620 through 30-624, Orange County Code
APPROVED: 6/27/06

4.04.01 CONCURRENCY MANAGEMENT OFFICE CAPACITY RESERVATION FEE AND IMPACT FEE REFUND POLICY

I. POLICY

The transportation capacity reservation fee is used to mitigate the impacts of new development on public facilities and to reserve a quantified capacity on selected roadway segments directly associated with that development project. Similarly, impact fees are used by the County to offset the impact on public facilities that is caused by new development. However, in certain circumstances, customers may decide to request a refund of the capacity reservation fees or impact fees they have paid. In order to process such refund requests in a uniform fashion, the following procedures are established.

II. PROCEDURES

Capacity Reservation Fee Refunds

A. A customer may request a refund of capacity reservation fees in the event an error has been made in the amount of fees charged or if the customer no longer wishes to reserve the capacity or if the capacity reservation certificate has expired. Refunds of capacity reservation fees will be processed and granted pursuant to Sections 30-596(2) and 30-597(2) of the Orange County Code, as implemented by this policy.

B. A customer requesting a refund of capacity reservation fees must submit a written request to the Concurrency Management Official ("CMO") and provide all necessary information and documentation, including, but not limited to, a Refund Affidavit, to allow the CMO to process the request. The form for the Refund Affidavit shall be prepared by the County Attorney's office and provided to the customer by the CMO. The CMO will confirm that the request is valid and that the customer requesting the refund is the appropriate recipient of any potential refund, then will follow the procedure set forth in II.D. below. All refund vouchers will be prepared and reviewed in the order in which they were received; provided, however, that any refunds processed as a result of an error attributable to Orange County shall be processed first.

C. Each year, during the adoption of the fiscal year budget, OMB will establish a refund budget per impact fee zone, provided funds are available for

the zone. For purposes of preparing an annual refund budget and for processing refunds, OMB will determine funding availability based on all relevant factors, which may include, but shall not necessarily be limited to, funds committed to the County's Capital Improvements Program, commitments the County may have made pursuant to any Development Agreement(s), any litigation affecting funding, funding fluctuations based on legislative actions, and revenue projections.

D. Based on the availability of budgeted funds, the CMO shall determine whether the refund will be paid in full, paid in part, or delayed. If funds are available to effect a full refund, the CMO shall approve the refund request for the full amount, and the CMO shall forward the voucher to the Finance Department for processing and payment in full to the customer. If no funds are available in the current fiscal year to pay the refund, the CMO shall send a letter to the customer notifying the customer that the customer's refund will be delayed due to lack of available funding. If funds are available to effect only a partial refund, the CMO shall revise the refund voucher to reflect the amount of funds available to be refunded and forward the revised voucher to the Finance Department for processing and payment. The CMO shall also send a letter to the customer notifying the customer that the customer will receive only a partial refund (and the amount) and that the remaining portion of the refund will be paid when funds become available.

In the event a requested refund is not currently available, the customer's request shall be placed on a waiting list in the order in which it was received. The CMO shall maintain the waiting list and OMB shall notify the CMO as funds become available to pay the customer at the top of the list. The CMO shall then forward a refund voucher to the Finance Department for processing and payment and the CMO shall send a letter to the customer notifying the customer that funds to process (the remainder of) the refund are available and will be paid.

1. Once any portion of a refund is paid, the CMO shall notify the Public Works, Transportation Planning Division that the Capacity Reservation Certificate for which a refund was issued has been closed out. The Transportation Planning Division will then return any capacity being held pursuant to that Capacity Reservation Certificate back to the capacity bank.

2. An applicant may appeal the decision to place the applicant's refund request on a waiting list to the Concurrency Review Committee. Decisions of the Concurrency Review Committee may be appealed via the process outlined in Section 30-623 ("Appeals") of the Orange County Code.

Impact Fee Refunds

A. Law Enforcement, Fire/Rescue Services, Road, Parks and Recreation Impact Fees

1. A customer may request a refund of impact fees paid pursuant to Article II (Law Enforcement), Article III (Fire/Rescue Services), Article IV (Road), and Article VI (Parks and Recreation) of Chapter 23 of the Orange County Code in the event the development for which the fees were paid was never begun or if the fees have not been encumbered or spent by the County by the end of the calendar quarter immediately following six (6) years from the date the fees were received. Such refund requests shall be processed and granted in accordance with Section 23-33 (Law Enforcement), Section 23-63 (Fire/Rescue Services), Section 23-97 (Roads), and/or Section 23-184 (Parks and Recreation), as appropriate, as implemented by this policy.

Refunds shall be payable to the then present owner of record of the impact fee credits unless the CMO receives either a sworn, notarized affidavit from the owner of record stating that the money should be refunded to another person, with such person's name and address included therein, or a copy of a valid, legally binding document evidencing the transfer of ownership of the impact fee credits.

(a) If the development for which the fees were paid was never begun, any refund requests shall be processed as follows:

(i) The customer must submit a written request to the CMO and provide all necessary information and documentation, including, but not limited to, a Refund Affidavit, to allow the CMO to process the request. The form for the Refund Affidavit shall be prepared by the County Attorney's office and provided to the customer by the CMO. The CMO will confirm that the request is valid and that the customer requesting the refund is the appropriate recipient of any potential refund, will then assemble the written request along with any supporting documentation, and will prepare and submit a refund

voucher to the OMB, with a copy of the budget transfer request to the appropriate persons in Public Works, for evaluation. All refund vouchers will be prepared and reviewed in the order in which they were received.

(ii) OMB shall review the refund request and communicate, in writing, a request to the appropriate department or division to process a budget transfer from Reserve Funds, if available, or coordinate with the appropriate staff to arrange for another source of funds for the refund. The appropriate department or division will notify the CMO and OMB of the anticipated date of the budget transfer. Once the BCC has approved the budget transfer, OMB will notify the CMO to proceed with processing the refund. The CMO shall then approve the refund request, forward the refund voucher to the Finance Department for processing and payment in full to the customer, and send a letter to the customer informing them of the status of the refund.

(iii) For purposes of this policy, development shall be deemed to have begun when vertical construction is started (including, but not limited to, foundation work).

(b) If the fees have not been encumbered or spent by the end of the calendar quarter immediately following six (6) years from the date the fees were received, any refund requests shall be processed as follows:

(i) The then-present owner of the property must petition the board of county commissioners for the refund within one year following the end of the calendar quarter immediately following six years from the date on which the impact fee was received.

(ii) The petition shall be submitted to the county administrator, and shall contain:

- a. A notarized sworn statement that the petitioner is the current owner of the property;
- b. A copy of the dated receipt issued for payment of the impact fee;
- c. A certified copy of the latest recorded deed; and
- d. A copy of the most recent ad valorem tax bill.

(iii) Within sixty days from the date of receipt of a petition for refund, the county administrator (or his designee) shall advise the petitioner and the board of county commissioners of the status of the impact fee requested for refund. For purposes of determining whether impact fees have been spent or encumbered, the first money placed in the trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made in accordance with Chapter 23 of the Orange County Code.

(iv) When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, the money shall be returned with interest at the rate earned by the county.

2. In the event that it is demonstrated that the impact fees have been charged incorrectly, the refund request shall be processed in accordance with Section III. A.1.(a), above.

3. In accordance with Section 23-95(h), if the owner of record pays the impact fees but should have debited them from a credit account and wants a refund of the funds paid, the owner of record shall submit a refund request to the CMO accompanied by the appropriate supporting documentation. Such refund request shall be reviewed by the CMO in consultation with the County Attorney's Office to determine if the payment was the result of a "good faith mistake." The refund request shall be accompanied by supporting documentation sufficient to make a determination; the customer may be contacted to provide additional documentation. If it is determined that the payment error was made in good faith, the CMO shall forward the request to OMB to be handled in accordance with the policy set forth in Section III.A.1.(a)(ii) above. In the event it is determined that the payment was not a good faith error, the CMO shall send a letter to the customer denying the request. Under Section 23-95(h), a credit account means a road impact fee credit account established pursuant to a binding agreement or contract with the County, not a capacity reservation fee account.

An applicant may appeal the denial of a refund request made pursuant to this subsection to the Impact Fee Committee. Decisions of the Impact Fee Committee may be appealed in accordance with the process set

forth in Administrative Regulation 4.01, as amended from time to time.

4. In order to be consistent with the principles set forth in *Contractors & Builders Association v. City of Dunedin*, 329 So.2d 314 (Fla. 1976), *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983) *cert. denied*, 440 So. 2d 352 (Fla. 1983), and *Home Builders and Contractors Association of Palm Beach County, Inc. v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 984), *cert. denied*, 451 So. 2d 848 (Fla. 1984), impact fee refund requests shall be given priority over capacity reservation fee refund requests.

B. School Impact Fees

Customers requesting a refund of school impact fees paid pursuant to Article V of Chapter 23 of the Orange County Code shall submit their refund request to the CMO who shall, pursuant to the terms of the Interlocal Agreement between Orange County, Florida and the School Board of Orange County dated December 15, 1992, as amended from time to time, forward such request to Orange County Public Schools to be processed in accordance with the procedure set forth in Section 23-143 of the Orange County Code.

FOR MORE INFORMATION CONTACT: Growth Management Department and the Office of Management and Budget

REFERENCE: Ch. 30, Article XII and Ch. 23, Article II through VI

APPROVED: 02/23/10

4.05 PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY; PROCESS FOR REVIEW OF DRAFT LAND DEVELOPMENT REGULATIONS, ZONING REGULATIONS, COMPREHENSIVE PLAN AMENDMENTS, AND ROADWAY CONCEPTUAL ANALYSES

I. POLICY

The Planning and Zoning Commission (P&ZC), an advisory body to the Board of County Commissioners, is responsible for reviewing at a public hearing any draft ordinance proposing amendments or revisions to Orange County's zoning maps or regulations.

The Local Planning Agency (LPA), whose membership is comprised of the same individuals who serve on the P&ZC, is responsible for determining at a public hearing whether any draft ordinance proposing a land development regulation (LDR), or proposing amendments to an existing LDR, is consistent with the County's comprehensive plan, known as the Comprehensive Policy Plan (CPP). Also, the LPA is responsible for reviewing any draft ordinance proposing amendments or revisions to the CPP. Moreover, the LPA is responsible for reviewing any proposed Roadway Conceptual Analysis (RCA).

The sole purpose of this Administrative Regulation is to formalize the process, which has been followed since at least mid-2002, whereby the P&ZC/LPA reviews those above-described proposals, and how the comments by P&ZC/LPA will be transmitted, reviewed and received by the Board of County Commissioners.

The term "land development regulation" shall have the meaning that is set forth in the definition found at Section 380.031, Florida Statutes, as it may be amended from time to time.

No person shall have standing to judicially challenge any such proposal for the reason that the County failed to follow the requirements of this Administrative Regulation.

II. PROCEDURE

A. At least seven (7) days before a P&ZC/LPA meeting where the P&ZC or LPA shall review a proposed ordinance amending the zoning maps or regulations, a proposed LDR, a proposed amendment to an existing LDR, a proposed CPP amendment, or a proposed RCA, the staff shall provide each of the members of the P&ZC/LPA with a complete set of the documents related to the proposal, not just a staff report or an "Executive Summary."

B. Pursuant to the Florida Statutes and the Orange County Code, the LPA shall review a proposed LDR or a proposed amendment to an LDR for consistency with the CPP. When it deems necessary or appropriate, the LPA may suggest not only specific changes to the proposed LDR that it believes would make it consistent with the CPP, but also specific changes that do not relate to the CPP.

C. For its part, the P&ZC shall review proposed ordinances amending the zoning maps or

regulations. When it deems necessary or appropriate, the P&ZC may make revisions to such a proposed ordinance. Also, the P&ZC may propose such ordinances itself.

D. When the Board of County Commissioners holds a public hearing (or hearings) regarding any such proposal that has been reviewed by the LPA or P&ZC:

1. The P&ZC/LPA members shall be notified in writing at least seven (7) days before the Board hearing date(s).

2. The Board's agenda package shall include the P&ZC's or the LPA's specific recommendation(s), along with a cover letter from the Chairman of the P&ZC/LPA if the Chairman of the P&ZC/LPA chose to submit a letter.

3. The Chairman of the P&ZC/LPA shall be invited to summarize or explain the P&ZC's or LPA's position at the Board's hearing.

4. The P&ZC's version of how an ordinance amending the zoning maps or regulations should be worded shall be the official draft ordinance that is advertised and circulated for the public hearing(s) before the Board. Any differences that the staff may have with the P&ZC's draft shall be described in the staff report and those differences shall be presented to the Board in the form of an ancillary document that highlights the portions of the P&ZC's draft that the staff disagrees with (by underlines and strike-throughs).

5. Conversely, the staff's version of how a proposed LDR should read (except one amending the zoning maps or regulations) shall be the official draft ordinance that is advertised and routed for the Board hearing(s). Any differences that the LPA may have with the staff's draft shall be articulated in the LPA Chairman's letter and shall be specifically reflected by a back-up document with underlines and strike-throughs highlighting those part of the staff's draft that the LPA disagrees with.

6. Similarly, the staff's proposal regarding an RCA shall be the official version that is provided to the Board. Any differing views of the LPA shall be explained in the LPA Chairman's letter.

FOR MORE INFORMATION CONTACT: Office of County Administrator

REFERENCES: Section 163.3174, Florida Statutes; Section 501, Orange County Charter; and Sections 30-1, 30-35, 30-39 and 30-40, Orange County Code

APPROVED: 6/27/06

4.06 DEFERRAL OF IMPACT FEES IN LIMITED CIRCUMSTANCES, AND REQUIREMENTS FOR ACCEPTABLE LETTERS OF CREDIT FROM DEVELOPERS

I. POLICY

A. Under the provisions of the Transportation, Fire and Law Enforcement Impact Fee Ordinances, and other applicable service provision regulations, Orange County will accept a satisfactory irrevocable letter of credit allowing a developer to defer payment of fees until a certificate of occupancy is issued for the structure in question. Certain County ordinances provide for deferral of fees through a deferral agreement without a letter of credit, such as for commercial properties valued in excess of \$1 million and for affordable housing projects. The fee deferral contemplated in this Administrative Regulation is for instances not addressed through other means in County ordinance or regulation.

B. This process allows the developer to obtain building permits without paying the full fees due on a project at the time of issuance of the building permit. It does not reduce the total liability for payment of fees due to the County from the project.

C. This Regulation includes a checklist and flowchart as a helpful resource only. The written Policy and Procedures shall take precedence in the event a discrepancy exists.

II. PROCEDURES

A. Letters of credit used to guarantee the deferral agreement must conform to the following minimum requirements:

1. Letters of credit must be irrevocable and adhere to the guidelines set forth in the applicable ordinances.

2. Letters of credit must be drawn on a financial institution that is a qualified public depository

per Section 280.02, Florida Statutes, having an office in Orange County that is acceptable to the County in its sole discretion. All letters of credit must be payable to the Orange County Board of County Commissioners. Letters of credit must be able to be presented for draw in Orange County. Each letter of credit must provide an automatic extension option for ninety (90) days after its original expiration date. Division managers are responsible for maintaining the currency of the letters. Original letters of credit must be submitted to the Comptroller's Finance and Accounting Department for compliance review and safekeeping.

3. The dollar amount of the letter of credit must reflect a strict application of the fee schedules set forth in the fee ordinances. This dollar amount will be verified by the Growth Management Fiscal and Administrative Services Division at the time the letter of credit is submitted. If the letter of credit does not fully cover all fees due on the project, it cannot be approved and no building permits will be issued.

4. Letters of credit are limited to a term of no more than thirty months.

B. Prior to the submission of a letter of credit, the developer must submit a fully executed deferral agreement to be guaranteed by the letter of credit. These agreements must be signed and notarized by the developer or his/her representative and state the financial institution upon which the letter of credit is to be issued and drawn. The form of the deferral agreement is available through the Growth Management Fiscal and Administrative Services Division.

C. When the fully executed deferral agreements are received from the developer, the documentation is reviewed by the Fiscal and Business Services Division, County Administration, and the County Attorney's Office.

D. If the deferral agreement is rejected, the applicant has two options. Under option one, the developer may submit a revised deferral agreement. Under option two, the developer can seek an appeal of staff's determination to the Board of County Commissioners. Those individuals who pursue the second option should contact the County Attorney's Office for further details.

E. Upon approval of the deferral agreement(s), the Fiscal and Business Services Division

will acknowledge the approval in the appropriate fashion on the executed deferral agreement.

F. Upon approval, the developer must provide the executed and approval deferral agreement and the executed letter of credit to the Comptroller's Finance and Accounting Department along with four (4) copies of both documents for distribution as follows:

1. County Attorney
2. Development Engineering Division of the Public Works Department
3. Fiscal and Administrative Services Division of the Growth Management Department
4. Fiscal and Business Services Division

Submission by the developer of an approved executed deferral agreement and a suitable letter of credit will allow the Building Department to defer payment of the applicable fees until the issuance of the Certificate of Occupancy or until the Letter of Credit expires.

G. A draw on the letter of credit requires the signature of the Orange County Mayor and the County Comptroller (along with the County seal) to be deemed a valid request for payment. The developer may submit a check drawn on a local bank for the full amount due ten (10) working days prior to the expiration date of the letter of credit. Under no circumstances will the County accept a check which is submitted less than ten (10) working days prior the expiration date of the letter of credit. The County will submit letters of credit for payment five (5) working days prior to the expiration date of the letter of credit.

H. If the letter of credit is provided as temporary security pending the disposition of an appeal regarding the fee dollar amounts, the letter of credit will be released when the developer presents evidence to the County Attorney's Office that the appeal has been concluded to the satisfaction of the County Attorney's Office or when the developer secures the fees determined as a result of the appeal.

I. Letters of credit accepted as security will be released five (5) days after the developer or project owner pays all fees due on the project. Those fees deferred by the letter of credit must be paid in full to the Orange County Building Division at least ten (10) working days prior to the expiration date of the letter of credit. The Building Official then provides written notification that all fees have been paid to the Comptroller's Finance and Accounting Department. In

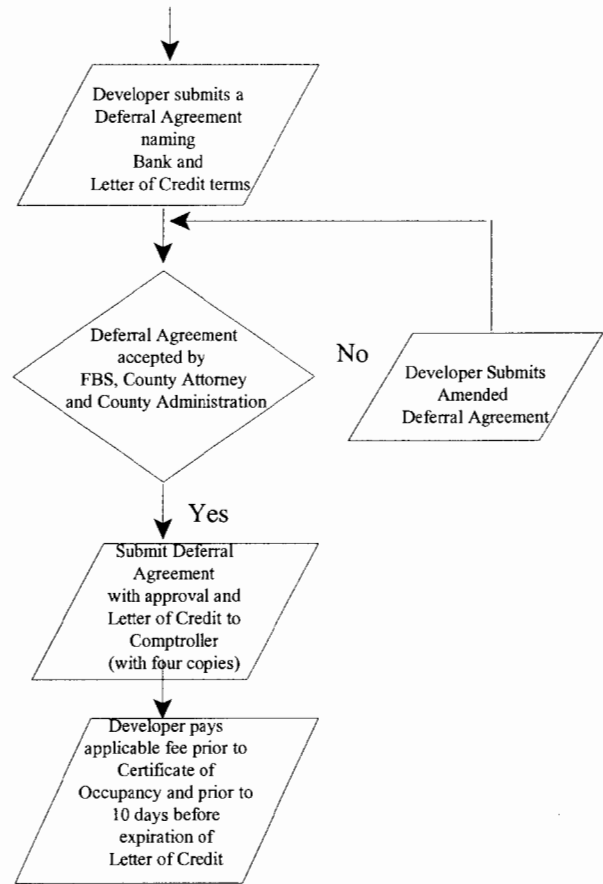
order to receive the letter of credit, the developer or his/her representative must sign and notarize a release authorization form. If the fees are not paid at least ten (10) working days prior to the expiration date of the letter of credit, the County will proceed to draw on the letter of credit.

Checklist

- Developer obtains form of Deferral Agreement from the Growth Management Fiscal and Administrative Services Division.
- Developer submits Deferral Agreement identifying the Bank and Letter of Credit terms to Orange County Fiscal and Business Services Division.
- Deferral agreement review taking up to two weeks.
- FBS – Bank and Letter of Credit
- County Attorney
- County Administration
- Approved deferral agreements are signed as a confirmation of approval by Fiscal and Business Services.
- Rejected deferral agreements can be amended and submitted again by the developer.

Developer submits approved deferral agreement and executed letter of credit to the Comptroller's Finance and Accounting Department along with four (4) exact copies of both the deferral agreement and the Letter of Credit.

- Developer pays deferred fee before 10 days prior to the due date to avoid the County drawing on the Letters of Credit to satisfy the fee obligation.

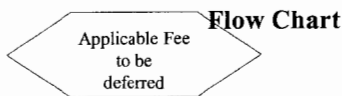


FOR MORE INFORMATION CONTACT: County Attorney's Office; Fiscal and Administrative Services Division, Growth Management Department; Building Division, Growth Management Department; Fiscal and Business Services Division, County Administrator's Office; Comptroller's Finance and Accounting Department
REFERENCE: Ordinance Nos. 85-2, 85-34 and 86-11
APPROVED: 6/27/06

4.07 TRANSPORTATION IMPACT FEE SQUARE FOOTAGE AGGREGATION REQUIREMENTS

I. POLICY

The Transportation Impact Fee Ordinance establishes an impact fee schedule for various forms of development. The office category has three separate rates which decrease as the corresponding square footage ranges increase. Likewise, the retail category has nine separate rates that decrease, generally speaking, as the corresponding square footage ranges increase. The following requirements are applicable to



those multi-building projects, which can be charged transportation impact fees based on the aggregate square footage of all buildings within a limited access area.

II. PROCEDURES

A. At least forty-five days prior to obtaining the first building permit for the shell of a project's first building, the developer must submit a written notice to the Building Division which advises the County of their intention to aggregate the square footage of all buildings within a limited access area. Such notification must include the Building Division's plan review number for the project, the square footage and use by square footage of each proposed building as shown on the architectural floor plans, the estimated completion date of each proposed building, and a copy of the site plans and legal description for the proposed limited access project. The aggregation request will not be processed until all of the above information is provided to the County in an acceptable form.

If the applicant obtains the first building permit for the shell of a project's first building prior to receiving written approval of aggregation privileges, the opportunity to receive aggregation privileges is automatically waived.

B. When the Building Division receives notification of intent to aggregate square footage, a copy of the "Transportation Impact Fee Square Footage Aggregation Requirements" will be forwarded to the applicant. Before the aggregation request is reviewed by the County, the applicant must submit a signed and notarized letter to OMB which the Building Division that states the following:

The undersigned applicant understands the guidelines set forth in the "Transportation Impact Fee Square Footage Aggregation Requirements" and agrees that, in the event the aggregation request is approved, he/she shall adhere to such guidelines, and agrees that a deviation from such guidelines, or a deviation from or an amendment to the submitted architectural floor plans or site plans, may jeopardize his/her privilege to aggregate transportation impact fees or to continue exercising his/her privilege to aggregate such fees.

C. The Building Division, the Public Works Department, and the County Attorney's Office shall review the information submitted per steps one A and B and provide a written letter to the applicant regarding

whether the aggregation request can be approved. Such notification will be provided within forty-five days of the date on which the applicant provided the documentation required by steps one A and B. Approval will be based in part on whether the project is within a single, limited access area. For the purposes of the "Transportation Impact Fee Square Footage Aggregation Requirements", a limited access area is defined as a project which is accessed by a common driveway or driveways, as that term has been defined and has been interpreted by the County, and which shares a common parking area. Approval will not be granted under any circumstances until the County receives the signed and notarized letter referenced in B above.

D. The developer must submit the original letter of approval to the Building Division in order to be charged impact fees based on the aggregate square footage. The Building Division will maintain a separate file containing the original approval letters for all projects allowed to aggregate their square footage. The fee sheets for each permit will also be kept in this file.

E. If the developer is allowed to aggregate and obtains all of a project's building permits at one time, the impact fees will be charged based on the total square footage of all the buildings. However, if a developer is allowed to aggregate and obtains the permits in a phased manner, the impact fees will be charged as follows:

1. When the shell permit for the first building is obtained, the rate applicable to the square footage of that shell building will be charged.

2. When the shell permit for the second building is obtained, the fee will be based on the combined square footage of the first and second shell buildings, minus the amount already paid for the first shell building.

3. When the shell permit for the third building is obtained, the fee will be based on the combined square footage of the first, second, and third shell buildings, minus the amount already paid for the first and second shell buildings, and so forth.

F. If a multi-building project contains more than one use, the area committed to the secondary use will be charged the difference of the rate applicable to the secondary use minus the lowest rate applicable to the primary use, as determined by the total square footage

of the primary use in all buildings within the limited access area.

G. If a developer chooses to defer payment of a project's impact fees as defined by the Road Impact Fee Ordinance and the Administrative Regulations entitled "Requirements for Acceptable Letters of Credit Securing Payment of Impact Fees," the impact fees must be paid as defined in E above for the shell of each building prior to the issuance of the Letter of Completion for the shell of that building.

H. If a developer conducts an alternate study to prove that a project's net traffic impact is lower than the rate charged per the aggregation method, the alternate site will be evaluated according to the percentage mix of the uses in the developer's project.

FOR MORE INFORMATION CONTACT: Building Division,
Growth Management Department
REFERENCE: Ordinance No. 85-34
APPROVED: 6/27/06

4.08 THRESHOLD CRITERIA FOR AFFORDABLE HOUSING, SINGLE- AND MULTI-FAMILY DEVELOPMENTS

I. POLICY

The Board of County Commissioners has determined that the provision of affordable housing is a critical need in Orange County and that developments which meet the definition of affordable, as outlined in these threshold criteria, should be given priority processing and/or economic concessions to improve their viability and encourage additional affordable housing developments. The criteria set forth in this Regulation represent the minimum standards necessary for a development to qualify as an "affordable housing development" for purposes of qualifying for financial and regulatory incentives administered under the County's Housing and Community Development Division. It is the intent of these criteria to encourage innovative and creative developments which provide affordable housing.

II. PROCEDURES

A. Application: Each developer/builder seeking certification for an affordable housing development will be provided an application to be completed and submitted to the Housing and Community Development

Division for evaluation, determination and disposition.

B. Definitions: Orange County uses the following definitions in establishing levels of affordability:

1. Low income households means households having one or more natural persons or a family with a total annual gross income that does not exceed eighty percent (80%) of the median annual income adjusted for family size for households within the metropolitan statistical area.

2. Very low income households means households having one or more natural persons or a family that has a total annual gross income that does not exceed fifty percent (50%) of the median annual income adjusted for family size for households within the metropolitan statistical area.

3. Maximum sales prices of new and existing single-family homes is automatically adjusted to those approved by the State of Florida for the Orlando Metropolitan Statistical Area (MSA) and adopted by the Board of County Commissioners.

C. Discounted Impact Fees for Single Family Developments: In order to be eligible for 62% discounts of impact fees, wastewater capital charges and water capital charges for units which are to be designated as affordable, such single family developments must:

1. Be located in Orange County's Urban Service Area, plus properties within rural settlements that are presently platted.

2. Set aside at least thirty percent (30%) of the units for low or very low-income households.

3. Be composed of detached or attached single family fee simple dwelling units but may not include condominiums.

4. Have a maximum sales price of less than \$125,000.

5. Be provided for in a developer's agreement between Orange County and the developer/builder which is approved by the Board of County Commissioners setting forth such additional terms and conditions as may be approved by such Board of County Commissioners, including impact fee deferrals as provided by Orange County's Building

Division, Utilities Division and the Orange County School Board, as such deferrals are set forth in County ordinances and regulations. However, approval of such developer's agreements by the Board of County Commissioners will not be required for developer/builders seeking to construct fifteen (15) or less urban infill homes. A developer/builder of 15 or less urban infill homes must meet all other certification requirements pursuant to II.C. of this Regulation and enter into a modified developers agreement signed by the Manager of the Housing and Community Development Division.

D. Discounted Impact Fees for Multi-Family Developments: Each developer/builder seeking certification as an affordable multi-family rental development, for purposes of receiving a twenty-five percent (25%) discount of impact fees, wastewater capital charges and water capital charges (which discounts are available on only such units as are designated as affordable) must meet the following criteria:

1. The maximum number of affordable housing units in a development is 325 units.
2. The development must meet one of the following minimum criteria:
 - a. Twenty percent (20%) of the units must be set aside for households earning fifty percent (50%) or less of the area's median income adjusted for family size; or
 - b. Forty percent (40%) of the units must be set aside for households earning sixty percent (60%) or less of the area's median income adjusted for family size.
3. Rent schedules for low income units must comply with all requirements established by the Florida Housing Finance Corporation.
4. At a minimum, each developer/builder must commit to a fifteen (15) year affordability period.
5. Each developer must acquire additional funding from the Low Income Housing Tax Credit (LIHTC) Program, State Apartment Incentive Loan (SAIL) Program, Tax Exempt Bond Financing, HOME

Program or any other program determined to be acceptable to Orange County.

6. The developer must have entered into a developer's agreement between Orange County and the developer/builder approved by the Board of County Commissioners and setting forth such additional terms and conditions for such discounts.

E. Additional Requirements

1. The Developer/builder or its principals must have prior experience in housing construction or development, except for an owner/builder.
2. The proposed development must be consistent with Orange County's affordable housing goals and objectives and the Orange County Comprehensive Policy Plan.
3. No modification or change to the threshold criteria contained in this Administrative Regulation shall be allowed without approval and action of the Orange County Board of County Commissioners.

FOR MORE INFORMATION CONTACT: Housing and Community Development Division, Growth Management Department
REFERENCE: Affordable Housing Task Force Report
APPROVED: 6/27/06

4.08.01 EXPEDITED REVIEW OF AFFORDABLE HOUSING APPLICATIONS

I. POLICY

The Board of County Commissioners understands the critical need for affordable housing in Orange County, and has determined that these affordable developments (as outlined in the criteria of Administrative Regulation 4.08) should be given priority processing in order to improve their viability and encourage additional affordable housing developments. To expedite the review of affordable housing applications, procedures have been established for variances (BZA actions), rezonings (P&Z actions), and subdivision reviews (DRC actions) that may save between 15 to 45 days in the process of review.

II. PROCEDURE

A. Board of Zoning Adjustment

1. A minimum of five (5) hearing slots from the Board of Zoning Adjustment (BZA) monthly 45-case limit shall be reserved for affordable housing projects that have been certified by the Housing and Community Development Division. Additional affordable housing projects may be scheduled depending on the number of other requests. (If, upon the close of receipt of applications, there are fewer than five applications for affordable housing projects, others may be scheduled in their place.)

2. Once a project is certified as affordable by the Housing and Community Development Division and a complete zoning application, including site plan, has been received by the Zoning Division, staff shall determine if an institutional review is needed. If it is, it shall occur at least ten (10) days prior to the scheduled public hearing. (Applications close the second Wednesday of every month for public hearings held the first Thursday of the following two [2] months in order to comply with advertising and notification requirements.)

B. Planning and Zoning Commission

1. Prior to submitting a zoning application and a Land Use Plan for a Planned Development (PD), an affordable housing applicant must have a pre-application meeting with County staff. Unless the applicant requests otherwise, the Zoning Division shall schedule and hold pre-application meetings for affordable housing projects within ten (10) working days after receiving the necessary copies of the concept plan and a copy of the affordable housing certificate.

C. Development Review Committee

1. Prior to being scheduled on the DRC agenda, a Planned Development or a Preliminary Subdivision Plan must first undergo a sufficiency review to ensure that the necessary information is included. Once the necessary

copies of plans and a copy of the affordable housing certificate are received by the Zoning Division, the Development Engineering Division shall conduct a sufficiency review within five (5) working days.

2. Once the Planned Development or Preliminary Subdivision Plan application for an affordable housing project (as certified by the Housing and Community Development Division) is found to be sufficient, it shall be scheduled for consideration by the DRC within 30 days.

D. Board of County Commissioners Scheduling of Public Hearings

1. When public hearings for certified affordable housing projects are requested for the Board by the Zoning or Planning Divisions, they shall clearly identify such projects as being affordable housing projects on the Request for Public Hearing Memo and ask to expedite the project pursuant to Administrative Regulation 4.08.01 in order for the Clerk to schedule them as soon as possible.

FOR MORE INFORMATION CONTACT:
Housing and Community Development Division,
Growth Management Department; Zoning Division,
Growth Management Department; Planning Division,
Growth Management Department

REFERENCE: Administrative Regulation 4.08

APPROVED: 6/27/06

4.09 WATER QUALITY CAPITAL PROJECTS PRIORITIZATION

I. POLICY

In order to improve water quality and maintain compliance with the state of Florida regulations governing surface water quality standards (62-302, F.A.C.), identification of impaired surface waters (62-303, F.A.C.), and Total Maximum Daily Loads (62-304, F.A.C.); Basin Management Action Plans (BMAPs); and the County's National Pollutant Discharge Elimination System (NPDES) Permit issued by the Florida Department of Environmental Protection, it is the policy of Orange County, through Comprehensive Policy Plan Conservation Element

Objective to monitor the waters of the county and implement capital projects to address pollution sources. Priority of the projects is based on risk assessment of the waters of the county for further degradation in water quality and regulatory requirements. All projects will be evaluated using the best scientific information available.

II. PROCEDURES

A. The Environmental Protection Division (EPD) must evaluate all potential water quality capital improvement projects for waterbodies identified annually using a ranking matrix that includes, at a minimum: risk of degradation, regulatory status, regulatory timeframes, external funding, cost-benefit analysis, and inter-agency partnerships.

B. Projects identified outside the office of EPD shall be submitted to EPD prior to the next budget cycle to allow time for evaluation.

C. EPD, through the annual budget process and approval, shall identify water quality capital improvement projects for submittal, which may include projects in any or all of the following phases:

a. Assessment: Waterbodies with declining water quality or at risk for declining water quality shall be studied to determine pollution sources. The assessment shall also identify potential projects that will mitigate pollution sources.

b. Feasibility Evaluation: Determine if projects can be built as identified in the assessment and the anticipated cost-benefit analysis.

c. Design & Engineering: Develop engineered plans for construction.

d. Construction: Build and implement designed projects.

e. Monitoring: Depending on the project, monitoring may be required to provide pollutant removal efficiency data.

D. The Board of County Commissioners approves the list of water quality capital improvement projects

through the annual budget process after considering input provided by the Environmental Protection Division, County Administration, and the Office of Management and Budget.

FOR MORE INFORMATION CONTACT:
Environmental Protection Division, Office of Management and Budget

REFERENCE: Admin Policy 6.02.01 General Capital Budget; Comp Plan Conservation Element Objective C1.2 and C1.11; NPDES Permit FLS000011

APPROVED: 12/20/18

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