



# CITY OF BELLE ISLE, FL

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## MEMORANDUM

From the Desk of Bob Francis, City Manager

**To:** Mayor and Council  
**Date:** January 18, 2022  
**Re:** Questions Related to Impact Fee Ordinance

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Before Ordinance 21-15 (changes to impact fees), there were several questions raised at the Council meeting on December 7<sup>th</sup>. Before the second reading and adoption of the ordinance, the Council wanted to have these questions answered. I discussed many of these questions with Commissioner Holihan due to his property development expertise.

**Question 1:** Why can't the developer receive a credit if the proposed development or redevelopment results in a lower impact generating development? **Section 46-193 (d)** seems to prevent this. So can we issue a credit if the impact is lower or if the replacement of a building, structure or residence with a similar building, structure or residence and with a similar land use?

**Response:** The City can issue a credit for the use, if they are developing with a lesser use but they should not get a credit or refund that might result in the City giving the developer a refund or any cash for the lower use. If a lesser use is being proposed, the existing use would provide enough credit so no additional fees are due, unless no activity occurred on the property (sat stagnant) for a year or more. Section 46-193 (d) would be amended to read: ***(d) If a development involves the replacement, expansion, and/or change of use related to an existing development, the impact fees due shall be determined by the difference between the fees that would otherwise have been due for the most recent use of the existing site and the fees for the proposed development or redevelopment. No impact fee credits or refunds will be given if a development involves the replacement, expansion, and/or change of use resulting in a lower impact generating development; however credit may be given for off-site development. Provided however, if a building or structure is demolished and a replacement building or structure is not permitted for reconstruction or redevelopment within one (1) year from demolition, 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.***

**Question 2:** Why can't there be an offset of impact fees if the developer pays for the off-site development? Section 46-195 doesn't allow for this.

**Response:** This could be cured through a Developer Agreement. With a Developer Agreement, we can permit the construction of specific off-site road system improvements in lieu of or with a credit against the road impact fee. We can add a new section for allowing for a Developer Agreement.

**Sec. 46-201 Development agreements.**

**(a) The city may enter into a development agreement with an applicant to establish road impact fees or to provide equivalent road improvements necessary to serve new buildings. A development agreement may include, but shall not be limited to, provisions which:**

**(1) Permit the construction of specific road system improvements in lieu of or with a credit against the road impact fee otherwise assessable**

**(2) Provide for a transfer of credits to any successor in interest in land.**

**(3) Allow a schedule and method of payment of impact fees in a manner different than provided in section 46-195, in a manner appropriate to the particular circumstances of the proposed development in lieu of the requirements for payment of the fees as set forth in this subsection, provided that security is posted or provided ensuring payment of the fees with interest, in a form acceptable to the city, which security may be in the form of a cash bond, irrevocable letter of credit, negotiable certificate of deposit or escrow account, surety bond, or lien or mortgage on lands to be covered by the building permit. The city manager may waive the security requirement for development agreements involving changes of use.**

**(b) Any agreement proposed by an applicant pursuant to this section shall be presented to and approved by the city council prior to when the road impact fee is due pursuant to this division. Any such agreement shall provide for execution by any mortgagees, lienholders, or contract purchasers in addition to the landowner, and shall require the applicant to record such agreement in the public records of the county. The city council shall approve such an agreement only if it finds that the agreement will apportion the burden of expenditure for new facilities in a just and equitable manner, consistent with applicable state law and case law and this division.**

**Question 3:** When is the payment of impact fees due? It doesn't specifically say when; it just says that it can't be paid prior to the issuance of a building permit, so it's assumed at the time the permits are paid for. When I was in Oregon, we allowed for developer agreements that allowed it to be paid prior to the issuance of a CO (gave the developer more cash up-front) or at the time of substantial completion of the development.

**Response:** This could also be addressed in the Developer Agreement. If the impact fees are not needed by the City up-front, the Developer Agreement can allow for fees to be paid prior to the issuance of a CO (giving the developer more cash up-front to complete the project) or at the time of substantial completion of the development. Payment of fees can be part of the Developer Agreement under (a)(3) above. If a Developer Agreement is not allowed, then under Sec. 46-193 we could add language like: **Except as provided for in Section 46-201 or herein, the road impact fee shall be due and payable at the earlier of: (i) prior to the issuance of certificate of occupancy for a residential structure; (ii) prior to issuance of building permit for tenant build out for an existing building; (iii) prior to the issuance of shell certificate of occupancy for new construction for nonresidential structure; and (iv) prior to the occupancy of or change in use of a building, structure and other improvement of land. If the road impact fee is paid in full prior to or at the time of issuance of the building permit, the applicant is entitled to a three percent cost reduction on the road impact fee; provided, however, such discount does not apply to impact fees paid at time of issuance of a building permit for tenant build out for an existing building.**

**Question 4:** What is General Government?

**Response:** That is clearly defined in the ordinance (page 5) and the study. It was suggested by the consultant to have this category as it takes the place of police, fire, and public works. If you see the comparison chart in the study (page 3), it clearly demonstrates this.