

ORDINANCE NO. 21-15

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, REPEALING ARTICLE VII OF CHAPTER 46 OF THE CITY'S LAND DEVELOPMENT CODE PERTAINING TO ROAD IMPACT FEES AND REPLACING SAME WITH NEW ARTICLE VII OF CHAPTER 46 OF THE LAND DEVELOPMENT CODE PERTAINING TO IMPACT FEES, THEREBY CREATING AND IMPOSING A NEW SYSTEM OF IMPACT FEES TO BE IMPOSED UPON DEVELOPMENT WITHIN THE CITY LIMITS; CREATING A NEW IMPACT FEE PROGRAM AND ADOPTING RELATED PROVISIONS PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT THEREOF; ADOPTING AN IMPACT FEE STUDY IN SUPPORT OF IMPACT FEES IMPOSED; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

RECITALS

WHEREAS, the City Council has retained the firm of Duncan Associates to study the technical basis to enact a new impact fee program within the City limits; and

WHEREAS, has prepared and presented to the City Council a report titled "Belle Isle, Impact Fee Study for Transportation, Parks, and General Government Facilities" dated October 2021 (the "Impact Fee Study"), which establishes the proportionate share of new development's impacts on the transportation, parks, and general governmental facilities ("Facilities") for which impact fees will be collected pursuant to this Ordinance; and

WHEREAS, the Impact Fee Study has been presented to and reviewed by the City Council, which has determined: (1) that impact fees are necessary to offset the costs to the City associated with meeting the demand for additional Facilities created by projected new residential and non-residential development; (2) that the amount of the impact fees to be imposed by the City bears a reasonable relationship to the burden imposed upon the City to provide to new development the additional Facilities addressed in the Impact Fee Study, (3) the expenditure of transportation impact fees, pursuant to the terms of this Ordinance, will result in a beneficial use to such new development reasonably related to the impact fees, per dwelling unit, by type, and per increment of non-residential development; (4) that a "rational nexus" exists between the projected new development and the need for additional Facilities to be funded via the impact fees; and (5) that the amount of the impact fees is "roughly proportional" to the additional Facilities required to provide adequate service to new development; and,

WHEREAS, pursuant to § 163.31801, Florida Statutes:

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

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

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

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

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

(f) This Ordinance requires audits of the City's financial statements to include an affidavit of the City's chief financial officer stating that the requirements of § 163.31801, Fla. Stat. have been complied with; and

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

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

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

WHEREAS, the City Commission finds, based on the Impact Fee Study, that improvements, including those associated with transportation, parks, and general governmental facilities, expand the capacity of the City's Facilities; and

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

NOW THEREFORE, BE IN ENACTED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA AS FOLLOWS:

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

Section 2. City Code Amendment. Article VII of Chapter 46 of the City's Code of Ordinances pertaining to the Road Impact Fee is hereby **REPEALED** in its entirety, and this

New Article VII of Chapter 46 of the City's Code of Ordinances is substituted and **ADOPTED** in lieu thereof (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

ARTICLE VII. - IMPACT FEES

Sec. 46-191. - Short title, authority, applicability, and adoption of technical report.

- (a) Short title. This article shall be known and may be cited as the "Belle Isle Impact Fee Ordinance."
- (b) Authorization. The city council has the authority to adopt this article pursuant to Article VIII of the Florida Constitution and F.S. ch. 125 and F.S. §§ 163.31801, 163.3201, 163.3202 and 380.06(16).
- (c) Applicability. This article shall apply to all new development within the incorporated area of the City of Belle Isle.
- (d) Incorporation of technical report. The City Council has reviewed and accepted, and incorporates into this article by reference, the report prepared by Duncan Associates, titled "Belle Isle, Florida Impact Fee Study for Transportation, Parks, and General Government Facilities," dated October 2021 (hereinafter the "Technical Report"), or any subsequent similar report, which establishes the need for and appropriate amount of impact fees for transportation, parks, and general government facilities necessary to serve new development.

Sec. 46-192. – Definitions.

- (a) Land use definitions. The land use categories in the impact fee schedule are defined as follows.

Single-Family Detached means a building containing only one dwelling unit, including a mobile or manufactured home.

Multi-Family means a building containing two or more dwelling units, including duplexes, apartments, residential condominiums, townhouses, and timeshares.

Retail/commercial means establishments engaged in the selling or rental of goods, services or entertainment to the general public. Such uses include, but are not limited to, amusement parks, auto parts stores, auto wrecking yards, auto repair, automobile sales and service, banks, bars or cocktail lounges, barber shops, bowling alleys, building material and lumber stores, car washes, convenience stores, dance studios, department stores, discount stores, florist shops, funeral homes, furniture stores, golf courses and driving ranges, grocery stores, hardware and paint stores, health or fitness clubs, home improvement stores, hotels or motels, laundromats, lawn and garden supply

stores, marinas, massage parlors, miniature golf courses, movie theaters, newsstands, nightclubs, pharmacies, restaurants, shopping centers, supermarkets, theaters, tire stores, variety stores, and vocational or technical schools. Any land use within a shopping center shall be considered a retail/commercial use.

Office shall mean a building exclusively containing establishments providing executive, management, administrative, financial or professional services, and which may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper or candy stand, or childcare facilities. It may be the upper floors of a multi-story office building with ground floor retail/commercial uses. Typical uses include real estate, insurance, property management, investment, employment, travel, advertising, secretarial, data processing, photocopy and reproduction, telephone answering, telephone marketing, music, radio and television recording and broadcasting studios, professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions; medical and dental offices and clinics, including veterinarian clinics; and business offices of private companies, utility companies, trade associations, unions and nonprofit organizations. This category does not include an administrative office that is ancillary to the principal use on the site.

Industrial/warehouse means an establishment primarily engaged in the fabrication, assembly or processing of goods, or the display, storage, and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. Typical uses include manufacturing plants, industrial parks, research and development laboratories, welding shops, wholesale bakeries, dry cleaning plants, bottling works, wholesale distributors, storage warehouses, trucking terminals, moving and storage firms, recycling facilities, trucking and shipping operations, major mail processing centers, and mini-warehouses.

Public/institutional shall mean a governmental, quasi-public, institutional or nonprofit recreational use. Typical uses include elementary, secondary or higher educational establishments, day care centers, hospitals, mental institutions, nursing homes, fire stations, city halls, county court houses, post offices, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fraternal lodges, and parks and playgrounds.

- (b) Other definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person who applies for a development permit for impact-generating land development.

Director means the city manager or employee designated thereby to review applications for development permits that require impact fee payments pursuant to this article.

General government facilities means facilities used for the provision of police protection and other general government services, including city administration, public works, and other city services, but excluding facilities related to transportation, parks and recreation, water, and wastewater services.

Impact-generating land development is land development designed or intended to permit a use of the land that will contain more dwelling units or floor space than the existing use of the land in a manner that increases the generation of vehicular traffic or the demand for parks or general government facilities.

Major roadway system means all arterial and collector roads within the city's incorporated area.

Site-related improvements means road improvements necessary to provide safe and adequate ingress and egress to a development site while maintaining efficient traffic operations. Such improvements include, but are not limited to, right-of-way and easements, turn lanes, acceleration and deceleration lanes, traffic control signals, and signage and marking.

Square feet means a measurement of one (1) foot by one (1) foot. For the purpose of assessing impact fees, it is calculated by using the gross floor area of a building, measured from the exterior faces of exterior walls, excluding areas within the interior of a building that are utilized for vehicular maneuvering and parking. Structures without roofs or walls shall not be deemed to have square footage under the terms of this article.

Sec. 46-193. – Imposition of impact fees.

- (a) Any person who applies for the issuance of a development permit for an impact-generating land development shall be required to pay impact fees in the manner and amounts set forth herein. No development permit for any impact-generating development requiring payment of an impact fee pursuant to this article shall be issued unless and until the impact fees hereby required have been paid. Impact fees shall not be collected prior to the issuance of a building permit. If no building permit is required, the impact fees shall be collected prior to the issuance of the final permit required for the development. The obligation to pay impact fees due shall run with the land.
- (b) Unless the applicant requests an independent fee calculation pursuant to section 46-194 of this article, the impact fees due shall be determined by using the applicable fee schedule set forth below.

- (1) The following fee schedule will be in effect from April 1, 2022 through March 31, 2023.

<u>Land Use Type</u>	<u>Unit</u>	<u>Transp.</u>	<u>Parks</u>	<u>Gen.</u>	<u>Total</u>
				<u>Gov't</u>	
<u>Single-Family Detached</u>	<u>Dwelling</u>	<u>\$1,609</u>	<u>\$781</u>	<u>\$1,023</u>	<u>\$3,414</u>
<u>Multi-Family</u>	<u>Dwelling</u>	<u>\$1,457</u>	<u>\$687</u>	<u>\$900</u>	<u>\$3,044</u>
<u>Retail/Commercial</u>	<u>1,000 sq. ft.</u>	<u>\$2,912</u>	<u>n/a</u>	<u>\$940</u>	<u>\$3,852</u>
<u>Office</u>	<u>1,000 sq. ft.</u>	<u>\$2,755</u>	<u>n/a</u>	<u>\$470</u>	<u>\$3,225</u>
<u>Industrial/Warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$499</u>	<u>n/a</u>	<u>\$91</u>	<u>\$590</u>
<u>Public/Institutional</u>	<u>1,000 sq. ft.</u>	<u>\$1,140</u>	<u>n/a</u>	<u>\$238</u>	<u>\$1,378</u>

- (2) The following fee schedule will be in effect from April 1, 2023 through March 31, 2024.

<u>Land Use Type</u>	<u>Unit</u>	<u>Transp.</u>	<u>Parks</u>	<u>Gen.</u>	<u>Total</u>
				<u>Gov't</u>	
<u>Single-Family Detached</u>	<u>Dwelling</u>	<u>\$1,788</u>	<u>\$781</u>	<u>\$1,023</u>	<u>\$3,593</u>
<u>Multi-Family</u>	<u>Dwelling</u>	<u>\$1,483</u>	<u>\$687</u>	<u>\$900</u>	<u>\$3,070</u>
<u>Retail/Commercial</u>	<u>1,000 sq. ft.</u>	<u>\$2,912</u>	<u>n/a</u>	<u>\$940</u>	<u>\$3,852</u>
<u>Office</u>	<u>1,000 sq. ft.</u>	<u>\$2,755</u>	<u>n/a</u>	<u>\$470</u>	<u>\$3,225</u>
<u>Industrial/Warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$499</u>	<u>n/a</u>	<u>\$91</u>	<u>\$590</u>
<u>Public/Institutional</u>	<u>1,000 sq. ft.</u>	<u>\$1,140</u>	<u>n/a</u>	<u>\$238</u>	<u>\$1,378</u>

- (3) The following fee schedule will be in effect from April 1, 2024 through March 31, 2025.

<u>Land Use Type</u>	<u>Unit</u>	<u>Transp.</u>	<u>Parks</u>	<u>Gen.</u>	<u>Total</u>
				<u>Gov't</u>	
<u>Single-Family Detached</u>	<u>Dwelling</u>	<u>\$1,967</u>	<u>\$781</u>	<u>\$1,023</u>	<u>\$3,772</u>
<u>Multi-Family</u>	<u>Dwelling</u>	<u>\$1,509</u>	<u>\$687</u>	<u>\$900</u>	<u>\$3,096</u>
<u>Retail/Commercial</u>	<u>1,000 sq. ft.</u>	<u>\$2,912</u>	<u>n/a</u>	<u>\$940</u>	<u>\$3,852</u>
<u>Office</u>	<u>1,000 sq. ft.</u>	<u>\$2,755</u>	<u>n/a</u>	<u>\$470</u>	<u>\$3,225</u>
<u>Industrial/Warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$499</u>	<u>n/a</u>	<u>\$91</u>	<u>\$590</u>
<u>Public/Institutional</u>	<u>1,000 sq. ft.</u>	<u>\$1,140</u>	<u>n/a</u>	<u>\$238</u>	<u>\$1,378</u>

(4) The following fee schedule will be in effect after March 31, 2025.

<u>Land Use Type</u>	<u>Unit</u>	<u>Transp.</u>	<u>Parks</u>	<u>Gen.</u>	
				<u>Gov't</u>	<u>Total</u>
<u>Single-Family Detached</u>	<u>Dwelling</u>	<u>\$2,146</u>	<u>\$781</u>	<u>\$1,023</u>	<u>\$3,951</u>
<u>Multi-Family</u>	<u>Dwelling</u>	<u>\$1,536</u>	<u>\$687</u>	<u>\$900</u>	<u>\$3,123</u>
<u>Retail/Commercial</u>	<u>1,000 sq. ft.</u>	<u>\$2,912</u>	<u>n/a</u>	<u>\$940</u>	<u>\$3,852</u>
<u>Office</u>	<u>1,000 sq. ft.</u>	<u>\$2,755</u>	<u>n/a</u>	<u>\$470</u>	<u>\$3,225</u>
<u>Industrial/Warehouse</u>	<u>1,000 sq. ft.</u>	<u>\$499</u>	<u>n/a</u>	<u>\$91</u>	<u>\$590</u>
<u>Public/Institutional</u>	<u>1,000 sq. ft.</u>	<u>\$1,140</u>	<u>n/a</u>	<u>\$238</u>	<u>\$1,378</u>

- (c) The director shall determine the appropriate land use category or categories for the proposed development. The determination shall be based on the categories listed in the fee schedule, the proposed primary use of the site, and the definitions of the categories in section 46-192. In the event that the building permit covers multiple primary uses, such as residential and commercial in the same building, the fees for each primary use shall be calculated separately and summed.
- (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. 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.
- (e) If impact fees are due under this chapter or any portion or combination thereof are due, and such fees are not paid when due for any reason, including a failure to pay due to incorrect land use activity, mistake, or inadvertence, the city shall have the right to proceed to collect such fees as follows:
- (1) The city shall serve, by certified mail-return receipt requested and regular U.S. Mail, a notice of nonpayment upon the building permit applicant at the address set forth in the building permit application, and

then current owner of the property based on the ownership information appearing on the Orange County Property Appraiser website. Provided the city sends the notice of nonpayment, the applicant's and/or current owner's failure to receive delivery of such notice of nonpayment shall not invalidate or otherwise impact the city's ability to collect the outstanding amount owed and place and foreclose a notice of lien against the applicable property.

(2) The notice of nonpayment shall contain:

- i. A description of the property;
- ii. Advise the applicant and the property owner of the amount due and the fee and/or charges that were not paid; and
- iii. Advise that if the impact fees are not paid within 30 calendar days from the date of the notice of nonpayment, that a notice of lien against the applicable property for which the building permit was secured may be recorded in the official records of Orange County and such notice of lien may be foreclosed upon by the city to collect the outstanding sums owed plus accrued interest and attorneys' fees and other collection expenses.

(3) If the amount set forth in the notice of nonpayment is not paid within 30 days from the date of the notice of nonpayment, then:

- i. The outstanding balance owed to the city shall accrue interest at the rate of 12 percent per annum until such amount is paid in full;
- ii. The city may proceed to record a notice of lien against the applicable property in the official records of the county. Once recorded, the notice of lien shall constitute a lien against the property described therein; and
- iii. A copy of the notice of lien will be served by U.S. Mail to the applicant and the property owner at the same addresses as set forth in subsection (1) above.

(4) After the expiration of 60 days from the date of recording of the notice of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted and prosecuted in conformity with the procedures for the foreclosure of liens as set forth in the Florida Statutes. The city shall also have the right to bring an action for monetary judgment to collect past due amounts owed.

(5) The owner shall be responsible for and the city shall be entitled to reimbursement for the payment of all collection expenses and costs, including attorneys' fees and litigation costs and recording and filing fees, incurred by the city in the collection of fees and charges, filing of

liens, and in actions to foreclose such liens or actions for a monetary judgment.

- (6) If impact fees or any portion or combination thereof, have not been paid when due, the city shall have the right to, without notice, immediately withhold the issuance of and not process for review any certificate of occupancy, development permit, or development order applications associated with the development and property at issue and may issue and enforce a stop work order on construction associated with the development and property at issue until such fees and charges, including the city's associated collection costs, are paid in full.
- (7) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to, and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the city, any applicable law or administrative regulation of the state, or any agreement. Failure of the city to follow the procedure set forth in this section will not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city, any applicable law or administrative regulation of the state, or any agreement.

Sec. 49-194. - Independent fee calculation.

(a) Generally.

- (1) The intent of an independent fee calculation study is to determine appropriate impact fees for land uses that are not typical of the generalized land uses listed in the impact fee schedules. It shall not be grounds for an independent fee calculation that the initial occupant of the development will not generate as much impact as is assumed by the fee schedules, but that unique and permanent features of the development will result in lower impacts over the long term.
- (2) The impact fee may be computed by the use of an independent fee calculation study at the election of the fee payer, if the applicant believes it can be demonstrated that the nature of the proposed development makes it likely that the impacts generated will cost substantially less to mitigate than the amount of the fee that would be generated by the use of the fee schedule.
- (3) The preparation of the independent fee calculation study shall be the sole responsibility and expense of the electing party. Any person who requests an independent fee calculation study shall pay an application fee for administrative costs associated with the review and decision on such study.

(b) Requirements.

- (1) An independent fee calculation study for transportation impact fees shall provide independent sources of data for determining appropriate trip generation rate, new trip factor, and average length of a trip on the City's arterial and collector road system. The independent fee calculation study shall provide independent data not used in the technical report for all three (3) of these travel demand characteristics. The independent sources shall be (1) an accepted standard source of transportation engineering or planning data or (2) a local study on travel demand characteristics carried out by a qualified traffic planner or engineer pursuant to an accepted methodology of transportation planning or engineering.
- (2) An independent fee calculation study for general government facilities impact fees shall provide independent sources of data for determining appropriate functional population per development unit for the proposed development, using the methodology set forth in the technical report.
- (3) An independent fee calculation study for parks impact fees shall provide independent sources of data for determining appropriate measures of persons per dwelling unit to be added by the proposed development.

(c) Procedures.

- (1) An independent fee calculation study shall be undertaken through the submission of an application for an independent fee calculation. The application shall briefly describe how the applicant proposes to conduct the independent fee calculation and meet the standards for such study provided in this section.
- (2) Within ten (10) days of receipt of an application for an independent fee calculation study, the director shall determine if the application is complete. If the director determines that the application is not complete, a written statement specifying the deficiencies shall be sent by mail to the person submitting the application. The application shall be deemed complete if no deficiencies are specified. The director shall take no further action on the application until it is deemed complete.
- (3) When the director determines that the application is complete, the application shall be reviewed by the director with the assistance of the department of public works staff, and the director shall render a written decision in forty-five (45) days on whether the fee should be

modified and, if so, what the amount should be, based upon the standards below.

- (d) Standards. If, on the basis of generally recognized principles of impact analysis, it is determined that the data, information and assumptions used by the applicant in the independent fee calculation study satisfy the requirements of this section, the fee determined in the independent fee calculation study shall be deemed the fee due and owing for the proposed impact-generating development. The adjustment shall be set forth in a fee agreement. If the independent fee calculation study fails to satisfy the requirements of this section, the fee applied shall be that fee established for the development pursuant to section 46-193.

Sec. 46-195. - Site-related road improvements.

The transportation impact fee is designed to calculate the costs inherent in the construction of non-site-related improvements to the major roadway system and is not intended to assess an amount to construct site-related roadway improvements. Therefore, if an assessment for or the construction of site-related roadway improvements are required as a condition of development approval or permit, then to the extent permitted by law, said assessment or construction requirement shall be considered as an addition to the transportation impact fee assessed pursuant to the terms of this article.

Sec. 46-196. - Establishment of trust funds.

- (a) The impact fees collected by the city pursuant to this article shall be kept in separate accounts for each fee type from other revenue of the city.
- (b) Funds withdrawn from these accounts must be used solely in accordance with the provisions of this article. The disbursal of such funds shall require the approval of the city council, upon recommendation of the city manager.
- (c) Funds in these accounts shall be deemed to have been expended on a first-in, first out basis.

Sec. 46-197. - Use of funds collected.

- (a) The funds collected by reason of establishment of the transportation impact fee in accordance with this article shall be used solely for the purpose of administering, planning, acquisition, expansion and development of non-site-related improvements to the major roadway system determined to be needed to serve new land uses, including but not limited to:
- (1) Corridor studies and environmental assessments,
- (2) Design and construction plan preparation,

- (3) Right-of-way acquisition,
 - (4) Construction of new through lanes,
 - (5) Construction of new turn lanes,
 - (6) Construction of new bridges,
 - (7) Construction of new drainage facilities in conjunction with new roadway construction,
 - (8) Purchase and installation of traffic signalization, and
 - (9) Construction of new curbs, medians and shoulders.
- (b) The funds collected by reason of establishment of the parks impact fee in accordance with this article shall be used solely for the purpose of administering, planning, acquisition, expansion and development of additional land, amenities, and facilities for public parks and recreation purposes.
 - (c) The funds collected by reason of establishment of the general government impact fee in accordance with this article shall be used solely for the purpose of administering, planning, acquisition, expansion and development of additional land, facilities, vehicles and equipment for general government facilities as defined in this article.
 - (d) Funds collected by reason of the establishment of the transportation, parks, and general government impact fees shall not be used for maintenance, rehabilitation, repair, or replacement of existing facilities, or for the acquisition of vehicles or equipment with a useful life of less than five years, provided that the minimum useful life does not apply to public safety vehicles.
 - (e) Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts, and all income derived shall remain in the account.
 - (f) The city shall be entitled to retain up to three percent of the impact fees collected to offset the actual administrative costs associated with collection and use of said funds pursuant to this article.

Sec. 46-198. - Developer credits.

- (a) General.
 - (1) Any person who shall initiate any impact-generating land development may apply for a credit against any impact fee assessed pursuant to this article for any contribution, payment, construction, or dedication of land accepted and received by the city for those capital facilities.
 - (2) Credit for contributions, payments, construction or dedications against one type of impact fee shall not be transferable to another type of

impact fee. Credits shall be transferable between developments within the city.

- (3) Credit shall be in an amount equal to the estimated fair market value of the land dedication or improvement at the time of the application, or the value of the contribution or payment at the time it is made.
- (4) The city shall enter into a capital contribution front-ending agreement with any person who proposes or is required to dedicate or construct impact fee-eligible improvements.

(b) Credit agreement procedures.

- (1) The determination of any credit shall be undertaken through the submission of an application that includes a draft capital contribution front-ending agreement, which shall be submitted to the director.
- (2) If the proposed application involves credit for the dedication of land, the application agreement shall include the following information: a drawing and legal description of the land; the appraised fair market value of the land at the date a building permit is proposed to be issued for the impact-generating land development, prepared by a professional real estate appraiser who is a member of the Member Appraisal Institute (MAI) or who is a member of Senior Residential Appraisers (SRA); and if applicable a certified copy of the development order in which the land was agreed to be dedicated.
- (3) If the proposed application involves construction, the application shall include the proposed plan of the specific construction prepared and certified by a duly qualified and licensed Florida engineer or contractor; and the estimated cost of the proposed improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.
- (4) If the proposed application involves a credit for any other contribution or payment, the application shall include a certified copy of the development order in which the contribution or payment was agreed; if

payment has been made, proof of payment; or if payment has not been made, the proposed method of payment.

- (5) Within ten days of receipt of the proposed application for credit agreement, the director shall determine if the application is complete. If it is determined that the proposed application is not complete, the director shall send a written statement to the applicant outlining the deficiencies. No further action shall be taken on the proposed application until all deficiencies have been corrected or otherwise settled.
- (6) Within 30 days after an application for credit is determined complete, the director shall review the application and grant the proposed credit if it meets the standards set forth in this section. If the application for credit agreement is approved, a capital contribution front-ending agreement shall be prepared and signed by the applicant and the director. It shall specifically outline the contribution, payment, construction or land dedication; the time by which it shall be completed, dedicated, or paid, and any extensions thereof; and the dollar credit the applicant shall receive for the contribution, payment or construction.
- (c) Use of credits. Credits may be used by the credit holder to reduce impact fees that would otherwise be due from any development project within the city. The dollar value of the credits to be used shall be inflated or reduced by the same percentage by which the fee for the land use for which the credits shall be used has changed since the date of the credit agreement. Any credit amount not used within ten years of the date of the credit agreement shall expire and be of no further value.

Sec. 46-199. - Refunds.

If it is determined by the city that fee assessments collected pursuant to this article have not been spent or encumbered for expenditure by the end of the calendar quarter immediately following ten years from the date that the fee was received, or if the land uses for which the fees were paid were never begun, then said funds shall be eligible for refund to the then-present owner in accordance with the following procedures.

- (a) The then-present owner must petition the city council for the refund within one year following the end of the calendar quarter immediately following ten years from the date on which the fee was received by the city.
- (b) The petition must be submitted to the city manager and must contain:

 - (1) A notarized sworn statement that the petitioner is the current owner of the development site.

- (2) A copy of the dated receipt issued for payment of the fee.
 - (3) A certified copy of the latest recorded deed.
 - (4) A copy of the most recent ad valorem tax bill.
 - (5) Such other information which may be reasonably necessary to ascertain current ownership of the development site.
- (c) Within sixty days from the date of receipt of petition for refund, the city manager or his designee shall advise the petitioner and the city council of the determination of whether the fee requested for refund remains in the trust fund and has been there for ten years. For the purpose of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made.
- (d) If the money requested for refund is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following ten years from the date the fees were paid, the money shall be returned with interest at the rate of three percent per annum.
- (e) If the building permit or other development permit for which impact fees were paid has expired without opportunity for renewal and the permitted development has not begun, the entity that paid the fee may request a refund by filing an application for refund within 90 days of the final expiration of the permit. The application must contain a copy of the applicable development permit and evidence that the permit has expired and that the permitted development was not begun. The director shall review the application and make a written determination of whether it meets the standards of this subsection (e) within 30 days. If the determination is affirmative, the director shall cause the refund to be issued for 97 percent of the original impact fee payment to the entity that paid the impact fee. A refund shall not include interest or investment income on the impact fee while in the city's possession.
- (f) An impact fee payer may not retain the right to seek or collect a refund of an impact fee paid after the impact fee payer no longer owns fee simple title to the land for which the impact fee is paid. Only the then current owner of the land for which the impact fee was paid is entitled to seek and receive an impact fee refund that may be due.
- (g) No refunds are due under this section if the impact fee payer or the owner of land for which the impact fee was paid voluntarily signed a waiver or release of the right to seek or claim a refund of an impact fee paid. The owner of the land for which an impact fee has been paid has standing to file suit for a refund under the provisions of this section. No cause of action may be commenced for receiving a refund of impact fees paid following one (1) year after the date of the required expenditure or encumbrance date for the impact fees paid.

Sec. 46-200. - Appeals of impact fee determinations.

- (a) Any persons desiring to appeal the decision of the director regarding the assessment of an impact fee or an application for an independent fee calculation, a refund, or a credit shall file with the city clerk a written notice of appeal to the city council within 10 days of the director's decision.
- (b) The notice of appeal shall include a full explanation of the reasons for the appeal, specifying the grounds therefor and containing any documentation which the applicant desires to be considered. The appeal shall contain the name and address of the person filing the appeal and shall state their capacity to act as a representative or agent if they are not the owner of the property to which the impact fees pertain.
- (c) The city clerk shall schedule the appeal for the first city council meeting following 30 days from receipt of the written notice of appeal to the city council. Postponement of the appeal date may be granted by the city clerk if a postponement is requested by either the applicant or the director in writing at least ten days in advance of the scheduled city council meeting date.
- (d) The applicant and the director shall each be given opportunity to make oral presentations before the city council.
- (e) The city council, after hearing, shall have the power to affirm or reverse the decision of the director. In making its decision, the city council shall make written findings of fact and conclusions of law, and apply the standards in this article. If the city council reverses the decision of the director, it shall instruct the director to determine the outcome in accordance with its findings. In no case shall the city council have the authority to negotiate the amount of the fee, refund, or credit, or to waive the fee. The decision of the city council shall be final and not subject to further administrative appeal.

Secs. 46-201—46-220. - Reserved.

Section 3. Codification. Section 2 of this Ordinance will be codified and incorporated into the Belle Isle City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion

shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

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

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

Section 7. Effective Dates. This Ordinance shall become effective on _____ after its adoption by the City Commission of the City of Belle Isle, Florida.

FIRST READING: _____, 2021

SECOND READING: _____, 2021

ADOPTED this ____ day of _____ 2021, by the City Council of the City of Belle Isle, Florida.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Karl Shuck	_____	_____	_____
Randy Holihan	_____	_____	_____
Beth Lowell	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

CITY COUNCIL
CITY OF BELLE ISLE

ATTEST:

Nicholas Fouraker, Mayor

Yolanda Quiceno, City Clerk

Daniel W. Langley, City Attorney
Approved as to form and legality for the use
and reliance of the City of Belle Isle, FL,
only.

STATE OF FLORIDA

COUNTY OF ORANGE

I, YOLANDA QUICENO, City Clerk of the City of Belle Isle, do hereby certify that the above and foregoing document was duly and legally passed by the Belle Isle City Council, in session assembled on the ____ day of _____, 2021, at which session a quorum of its members were present.

City Clerk

s:\dl\clients\bellevue, city of\general b900-29001\impact fees\ordinances\city of belle isle ordinance adopting impact fees rev 10-20-21 - redline.docx