

MEMORANDUM

Agenda Item No. 7(B)
(Second Reading 5-5-20)
April 20, 2020


TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE:

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to road impact fees; amending chapter 33E of the Code; revising provisions relating to credits against road impact fees for existing development to codify method of calculating and recording credits for each property; providing for transfer of impact fee credits to different properties within impact fee benefit district; providing for refunds for impact fees paid for temporary uses; making technical changes; providing additional time to implement transfer of impact fee credits

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz and Co-Sponsor Chairwoman Audrey M. Edmonson.



Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: May 5, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is stylized and cursive, with a prominent flourish at the end.

Subject: Fiscal Impact Statement for Ordinance Relating to Road Impact Fees

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County as the proposed changes will not require additional staffing resources nor generate additional operational expenses.

A handwritten signature in black ink, appearing to read "Jennifer Moon". The signature is cursive and somewhat stylized.

Jennifer Moon
Deputy Mayor


FIS04320 200390

Memorandum



Date: May 5, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Social Equity Statement for Ordinance Amending Chapter 33E- Relating to Road
Impact Fees

The proposed ordinance relating to Road Impact Fees amends Chapter 33E of the Code of Miami-Dade County (Code) revising provisions related to credits against road impact fees for existing development to codify the method of calculating and recording credits for each property. The ordinance provides for the following: transfer of impact fee credits to different properties within impact fee benefit district; refunds for impact fees paid for temporary uses; additional time to implement transfer of impact fee credits; and technical amendments.

Implementation of the proposed ordinance would result in greater value and benefit to fee payers that (1) are no longer eligible for a refund and that did not build the full development that the impact fees were paid for, and (2) paid impact fees for temporary uses that have now ceased.

A handwritten signature in black ink, appearing to read "Jack Osterholt".

Jack Osterholt
Deputy Mayor

200390



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 5, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(B)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(B)
5-5-20

ORDINANCE NO. _____

ORDINANCE RELATING TO ROAD IMPACT FEES; AMENDING CHAPTER 33E OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING PROVISIONS RELATING TO CREDITS AGAINST ROAD IMPACT FEES FOR EXISTING DEVELOPMENT TO CODIFY METHOD OF CALCULATING AND RECORDING CREDITS FOR EACH PROPERTY; PROVIDING FOR TRANSFER OF IMPACT FEE CREDITS TO DIFFERENT PROPERTIES WITHIN IMPACT FEE BENEFIT DISTRICT; PROVIDING FOR REFUNDS FOR IMPACT FEES PAID FOR TEMPORARY USES; MAKING TECHNICAL CHANGES; PROVIDING ADDITIONAL TIME TO IMPLEMENT TRANSFER OF IMPACT FEE CREDITS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, impact fees provide a significant source of funding for improvements to the roadway network to increase the capacity of the roads based on the impact of new development; and

WHEREAS, the law requires that impact fees be roughly proportional to the impacts caused by the development against which they are being assessed, and the feepayers receive a benefit for the fees they have paid; and

WHEREAS, impact fees are assessed on development activity that exceeds the amount of development that lawfully existed from December 6, 1988 through June 4, 1989, or that exceeds the amount of development for which impact fees were paid after June 4, 1989; and

WHEREAS, impact fees may be refunded in certain cases, including where building permits have been revoked, but such refunds must be applied for within a set period of time; and

WHEREAS, after the refund period expires, the subject property is entitled to credits that would allow the property to be developed or redeveloped without paying additional impact fees, up to the greater of the amount for which impact fees had previously been paid, or the amount of lawfully existing development between December 6, 1988, and June 4, 1989; and

WHEREAS, this Board wishes to codify the formula for calculating credits and the system of recording credits available on a subject property, which had previously been addressed through administrative interpretations of chapter 33E; and

WHEREAS, many properties for which impact fees have been paid have excess credits, because the full amount of development for which impact fees were paid was not built but is no longer eligible for a refund, and the property owners do not intend to redevelop and utilize those remaining credits in the near future; and

WHEREAS, this Board wishes to provide greater value and benefit to fee payers who did not build the full development for which they paid impact fees but who are no longer eligible for a refund, by allowing them to transfer their excess credits to other properties that are currently being developed or redeveloped within the same impact fee benefit district; and

WHEREAS, this Board also wishes to provide for refunds of impact fees paid for temporary uses that have ceased but for which impact fees had been assessed based on the use continuing for an extended period of time,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Chapter 33E of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Chapter 33E - ROAD IMPACT FEE ORDINANCE

* * *

Sec. 33E-5. - Definitions.

The words and terms listed below are hereby defined for the purpose of this chapter:

* * *

- (9) *Development activity, development or activity* means any activity for which a building permit >>(i)<< is required pursuant to the ~~[[South]]~~ Florida Building Code >>or<< ~~[[and/or]]~~ any applicable County or municipal ordinance >>, or (ii) was required by the applicable code when the activity was undertaken<<.
- (10) *Existing development* means >>(i)<< the lawful land use physically existing at any time during the period from December 6, 1988 through June 4, 1989 and any development or additional development for which the landowner >>held<< ~~[[holds]]~~ a valid building permit as of June 4, 1989 >>(collectively referred to as the "preexisting development"), and (ii) for property that has been the subject of development activity for which a building permit was issued after June 4, 1989,<< ~~[[Existing development shall also include]]~~ the maximum level of development activity for which a previous impact fee was paid under the provisions of this chapter. As used in this chapter, the term "lawful land use" shall not include a land use which has been established or maintained in violation of >>the Florida Building Code or applicable land development regulations

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

or building codes, as defined in section 163.3164, Florida Statutes, as may be amended<< ~~[[this chapter or applicable municipal codes]]~~.

* * *

Sec. 33E-7. - Road impact fee formula.

* * *

(b) In the case of development activity involving a change of existing use >> ~~and~~ ~~or~~ magnitude of existing use >>, or both, or which otherwise generates additional vehicular trips<< ~~[[in which a building permit is required]]~~, the proposed development shall be required to pay an impact fee only for any increase >>over the existing development<< ~~[[in the development activity]]~~. >>Where an impact fee was assessed for existing development and was reduced based on an independent study approved in accordance with section 33E-9, any change in development activity shall be reviewed to determine whether the proposed change generates additional vehicular trips above the amount calculated in the independent study.

(1) ~~The~~<< ~~[[In this case, the]]~~ impact fee shall be calculated by computing the difference between the impact fee for the proposed development activity and >>any available credits on the subject property in accordance with section 33E-14<< ~~[[the impact fee for the existing development activity as defined in Section 33E-5]]~~, less the applicable administrative fee.

>>(2)<< Any building permit which expires or is revoked after >>June 4, 1989<< ~~[[the effective date of this chapter]]~~ and for which a fee has not previously been paid under this chapter shall be required to comply with the provisions >>of this chapter<< ~~[[herein]]~~.

>>(3)<< No refunds will be given for >>a change in<< proposed development activity resulting in a negative fee calculation >>, but the subject property shall be entitled to credits in accordance with section 33E-14 for the difference<<.

* * *

~~[[d) Any change of use, redevelopment or modification of an existing use which requires the issuance of a building permit and which generates additional vehicular trips shall pay a road impact fee based on the net increase in the impact fee above that which would have been required for the previous use.]]~~

* * *

Sec. 33E-8. - Fee computation by adopted schedule.

The fee payer may elect to allow the County Public Works Director to use the impact fee schedule set forth below developed pursuant to the formula set forth in subsection 33E-7(a). The Impact Fee Per Unit of Development shall be multiplied by the Present Day Cost (PDC) Multiplier for the year in which the fee is paid in accordance with the table in subsection 33E-8(d).

* * *

~~(d) [[In determining existing development activity, as defined in Section 33E-5(10) of this chapter, and the units of proposed or existing development, the County Public Works Director shall use the building permit and certificate of use information contained in the records of the Miami-Dade County Regulatory and Economic Resources Department and municipal building code and zoning regulation administering agencies.~~

~~(e)]] Table of Present Day Cost (PDC) Multipliers.~~

* * *

Sec. 33E-10. - Roadway improvement or select transit capital improvement contributions in-lieu-of-fee.

(a) In lieu of payment of all or part of the road impact fee, the County Public Works Director may accept the offer of a fee payer to construct all or part of an off-site roadway improvement or select transit capital improvement approved pursuant to Section 33E-12 of this chapter.

* * *

- (2) Such contributions in-lieu-of-fee shall be credited against payment of an impact fee in the amount determined by the County Public Works Director pursuant to >>section<< [[Section]] 33E-8 or 33E-9. The total amount of contributions in-lieu-of-fee shall not exceed the road cost portion of the impact fee formula in >>section<< [[Section]] 33E-7.
- (3) Contributions in-lieu-of-fee shall not be applied to the 2 percent County administrative cost portion of the impact fee which shall remain the responsibility of the feepayer. Where a feepayer seeks to apply a contribution in-lieu-of-fee credit against payment of the road impact fee, the administrative fee portion of the impact fee shall be the sum of: (a) 2 percent of the contribution in-lieu-of-fee or \$1,000.00, whichever is less, and (b) 2 percent of the remaining road cost not satisfied by the contribution in-lieu-of-fee.
- (4) Previously approved contributions in-lieu-of-fees which are: (1) unused and (2) based on a net road cost which has been subsequently adjusted, shall be entitled to an adjustment equal to the percentage increase or decrease of the net road cost in the road impact fee formula. ~~[[Previously approved contributions in lieu of fees which are: (1) unused and (2) based on a road cost which has been subsequently adjusted, shall be entitled to an adjustment equal to the percentage increase or decrease of the road cost in the road impact fee formula.]]~~ Any such adjustment shall only be utilized to >>determine credits for existing development, as provided in section 33E-14,<< ~~[[offset road impact fees]]~~ and shall not be refundable.

* * *

- (e) If pursuant to >>section<< [[Section]] 33E-10 ~~[[a) and 33E-10(b)]]~~, the County Public Works Director accepts improvements with a cost in excess of the impact fee computed pursuant to >>section<< [[Section]] 33E-8 or Section 33E-9 herein, the feepayer, upon written request, shall be reimbursed for the amount of the excess cost as said cost is determined by the Public Works Director pursuant to Section 33E-10 ~~[[of this chapter.]]~~ >>, in accordance with the following:

- (1)<< It shall be the burden of the feepayer to make a written request for reimbursement.
- >>(2)<< The feepayer shall only be eligible for reimbursement after such time as the improvement is completed and accepted by the County Public Works Director or the State.
- >>(3)<< Reimbursements shall be made from the corresponding benefit district trust fund.
- >>(4)<< No reimbursement shall be made after 6 years from the date of first building permit issuance; or for the cost of completed improvements that do not exceed the computed impact fee.
- >>(5) If the feepayer does not obtain reimbursement, the property shall be entitled to a credit for the cost in excess of the computed impact fee, which shall be governed by section 33E-14.<<

* * *

- (h) Authorized contributions in lieu of fees are not site-transferable and may only be applied against the impact fees due for developments within the parent tract (development property) of the application for which the off-site contributions were made and authorized. Allocations of contributions in lieu of fees to sub-parcels within the parent tract shall be on based on the prorated area (square footage or acreage) unless an alternative allocation or reallocation has been approved by the County Public Works Director. >>Notwithstanding the foregoing, excess credits may be transferred in accordance with section 33E-14.<<
- (i) The fee payer shall pay a nonrefundable administrative cost, in the amount set forth in an implementing order approved by the Board of County Commissioners, to be used by the county for processing and review of the contributions in lieu of fee study. This fee shall not be credited against the amount of road impact fees due.
- (j) ~~[[[Reserved.]]~~
- (k)]] Determination of the amount of contributions in lieu of road impact fees to be accepted shall be determined by the County Public Works Director based on a review of the documentation provided by the feepayer and current cost information. Any increase in this amount due to changes in construction plans must be authorized in advance by the Public Works Director.

~~[[(4) Previously approved contributions in lieu of fee that have not yet been used may be re-adjusted based on the percentage increase or decrease in the net road cost as recalculated pursuant to Section 33E-7. Any such adjustment may be applied toward payment of road impact fees but shall not be refundable.]]~~

* * *

Sec. 33E-13. - Refund of impact fees paid.

* * *

>>(d) Refunds related to temporary uses. Notwithstanding any other provisions to the contrary, and regardless of whether fees have been expended, a feepayer who paid road impact fees for a temporary use shall be eligible for a partial refund in accordance with this subsection:

- (1) For purposes of this subsection, "temporary use" means any use of a property or structure that is limited in its duration and that requires a certificate of use or building permit.
- (2) The feepayer shall submit a written request for refund to the County Planning and Zoning Director on a form acceptable to the Director.
- (3) The feepayer shall submit proof to the Director that all structures associated with the temporary use have been removed.
- (4) The amount of the refund shall be in accordance with the following table, except that administrative costs and convenience fees shall not be refunded:

<u>Removal within:</u>	<u>Percentage of Road Impact Fee Refunded</u>
<u>1 Year</u>	<u>80 Percent</u>
<u>2 Years</u>	<u>60 Percent</u>
<u>3 Years</u>	<u>40 Percent</u>
<u>4 Years</u>	<u>20 Percent</u>
<u>5 Years</u>	<u>0 Percent</u>

<<

Sec. 33E-14. - Exemptions and credits.

* * *

(c) >>Credits. The subject property shall be entitled to credits for existing development, as defined in section 33E-5, which shall be the maximum amount of development allowed on the subject property without payment of additional impact fees. Credits shall be calculated and administered in accordance with this subsection.

(1) Formula. Credits shall be calculated in accordance with the following formula:

$$\begin{aligned}
& \text{Preexisting development} \\
& \quad \text{plus} \\
& \quad \text{Existing development for which road impact fees} \\
& \quad \text{have been paid in accordance with this chapter,} \\
& \quad \text{including contributions in-lieu-of-fee} \\
& \quad \text{minus} \\
& \quad \text{Refunds obtained pursuant to sections 33E-10 or 33E-} \\
& \quad \quad \text{13} \\
& \quad \text{minus} \\
& \quad \text{Reductions in the impact fee based on an independent} \\
& \quad \text{study approved in accordance with section 33E-9.}
\end{aligned}$$

(2) Determination of existing development.

- a. The amount of existing development shall be determined based on the entirety of all structures constructed on the subject property, regardless of whether those structures are only partially occupied or partially in use when the determination is made.
- b. In determining the amount of existing development, the Zoning Director shall use the building permit and certificate of use information contained in the County's records and in any applicable municipal records.
- c. Where an impact fee was subject to an independent study approved in accordance with section 33E-9, credits shall be based on the number of trips calculated in the independent study and any development equivalencies associated therewith, rather than on square footage, number of units, or other measure of development.

- (3) Record-keeping system for credits. Credits may be recorded based on the folio number of the subject property for which the applicable building permit or other development order was issued, or through another record-keeping system acceptable to the Zoning Director.
- (4) Method of recording credit amount. Credits may be recorded: (i) as the amount of the road impact fee paid for existing development, or the amount that would have been assessed under the current formula for preexisting development, subject to adjustment as provided in paragraph (7) below; (ii) as provided in this subsection for certain development orders approved prior to June 4, 1989; or (iii) in another manner acceptable to the Zoning Director that adequately records the threshold of existing development below which no additional impact fees will be owed and that adequately accounts for transferability of credits in accordance with this subsection.
- (5) Certain development orders approved prior to June 4, 1989. The Zoning Director shall maintain records of credits given by the County based on claims submitted prior to May 23, 1990, in accordance with Ordinance No. 88-11, << ~~[[Credit for up to the full amount of the net road cost portion of the impact fee shall be given by the County Public Works Director]]~~ for off-site roadway contributions, or payments that were voluntarily proffered or required under a county or municipal development order issued for a development of regional impact or development of county impact or under other legislative or ministerial action approved prior to June 4, 1989. ~~[[Credit shall be given to the extent the contribution, payment or construction meets the definition of off-site roadway improvement contained in Section 33E-5(n) of this chapter. Any claim for credit pursuant to this section must be filed with the County Public Works Director by May 23, 1990, and shall be in accord with the standards and procedures for issuance of credits provided therein. Credits shall not be applied to the two (2) percent county administrative cost portion of the impact fee which remains the responsibility of the fee payer and must be paid at the time of the building permit issuance. A credit shall only be considered against the~~

~~fee due for improvement to those properties encompassed by the previous development order or action contemplating the off-site roadway improvements. Any feepayer claiming such credit shall present documentation of land valuation at time of roadway improvement and/or construction costs, adjusted to current United States dollar values as defined in the impact fee manual. The same shall be considered by the County Public Works Director in determining the amount of credit to be given toward the impact fee. The County Public Works Director shall be guided by the criteria set forth in the impact fee manual. No refunds shall be made under this provision of this section. Any appeal from such a determination by the County Public Works Director shall be reviewed by the Developmental Impact Committee Executive Council pursuant to the procedures set forth in the adopted impact fee manual.]]~~

>>(6) Administrative fee when credit applied. << Where a feepayer seeks to apply a credit against payment of the road impact fee, the administrative fee portion of the impact fee shall be the sum of: (a) >>2<< ~~[[two (2)]]~~ percent of the credit or >>\$1,000.00, << ~~[[one thousand dollars (\$1,000.00)]]~~ whichever is less >>1<< and (b) >>2<< ~~[[two (2)]]~~ percent of the remaining net road cost not satisfied by the credit.

>>(7) Adjustment of credits. Where credits are recorded based on the amount of the fee that was assessed or paid, the credits << ~~[[Previously approved off-site road impact fee credits which are: (1) unused and (2) based on a net road cost which has been subsequently adjusted;]]~~ shall be entitled to an adjustment equal to the percentage increase or decrease of the net road cost in the road impact fee formula. Any such adjustment shall only be utilized to >>determine credits for existing development, as provided in this subsection, << ~~[[offset road impact fees]]~~ and shall not be refundable. >>In no event shall the adjusted credits exceed the amount of the road impact fee that would be owed under the current road impact fee formula for the development activity.

(8) Transferability of credits within a parent tract or unified property. If requested or consented to by the applicable fee payers or property owners, the Zoning

Director may reallocate impact fee credits among properties within the same parent tract or among properties subject to a unity of title or covenant in-lieu-of unity of title and may impose appropriate conditions on such reallocation to ensure appropriate accounting of existing development. In that event, the Zoning Director shall update the County's records of credits to reflect the respective reduction and addition of credits on the applicable properties. The Zoning Director may also require, subject to review by the County Attorney as to form and legal sufficiency, declarations of restrictions, or other instruments acceptable to the Zoning Director, to be recorded on the subject properties to memorialize the transfer of credits.

(9) Transferability of excess credits within the same benefit district. Excess credits may be transferred to another property within the same impact fee benefit district, as defined in section 33E-11.1, only in accordance with the following procedures:

(i) For purposes of this section, "excess credit" means the difference by which the amount of impact fees paid on a subject property exceeds the amount of impact fees that would be assessed for all structures that were built on the subject property, less any refunds and any reductions based on independent studies. The following shall not be considered in calculating excess credits:

- a. Underutilization of an existing structure or use; and
- b. Credits based on pre-existing development.

(ii) Application for transfer shall be made on a form acceptable to the Zoning Director.

(iii) The Zoning Director shall require, subject to review by the County Attorney as to form and legal sufficiency, that declarations of restrictions, or other instruments acceptable to the Zoning Director, be recorded on the property from which excess credits are being transferred (the "sending property") and to which the excess credits are being transferred (the "receiving site"), addressing the following:

- a. Identification of the amount of excess credits that are being transferred, which may be identified as the amount of road impact fees paid or assessed, as adjusted in accordance with this subsection; the amount of existing development; a combination of both; or in such other manner acceptable to the Zoning Director that appropriately quantifies the excess credits being transferred.
 - b. Such additional terms as the Zoning Director deems reasonable or necessary to ensure an accurate accounting of credits that are available for future development on the sending site and the receiving site.
- (iv) Upon approval of the transfer application, the Zoning Director shall update the County's records of credits to reflect the reduction of credits on the sending site and the addition of credits on the receiving site.<<

* * *

Section 2. The provisions of paragraph (9) of subsection (c) of section 33E-14 of this ordinance, regarding transferability of excess credits within the same benefit district, shall go into effect 120 days from the effective date of this ordinance. Within 150 days from the effective date of this ordinance, the County Mayor or County Mayor's designee shall provide a report to this Board regarding implementation of this provision and shall place the completed report on an agenda of the Board pursuant to Ordinance No. 14-65.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:

Dennis A. Kerbel

Prime Sponsor: Commissioner Jose "Pepe" Diaz
Co-Sponsor: Chairwoman Audrey M. Edmonson