



DEPARTMENT: Community Development	Reading No.	1
	Public Hearing	Yes
	Quasi-judicial Item (Disclosure Required)	No
COUNCIL DISTRICT: N/A	Item No.	C.13.

SUBJECT:

Zoning Code amendment (Z-2019-1285AD) and Land Development Regulations (LDR-2019-01) - Capacity reservation fee elimination and amendments to impact fees/mobility fees

BACKGROUND/CONSIDERATION:

This is the first reading of an ordinance amending Chapter 58, Appendix B and Appendix D of City Code as it relates to impact fees and mobility fees. The intent of the changes is to reduce development barriers by eliminating extra steps in the development process; allowing all impact fees to be paid at certificate of occupancy; and providing additional deferral of impact fee options for affordable housing.

The ordinance provides for the elimination of capacity reservation fees, which are an upfront, non-refundable percentage payment of the estimated impact fees for water, sewer and transportation/mobility due at site plan approval. In anticipation of the new development software, Engineering, Code Compliance, and Community Development have discussed the effectiveness of the capacity reservation fees and are recommending that they be eliminated. In addition, the amendment would modify the timing of impact fee payment for water, sewer and transportation/mobility fees, from issuance of a building permit to certificate of occupancy. Currently, recreation and public facility impact fees are due at the time of a certificate of occupancy (CO), but a deferral process for the creation of jobs is available for non-residential projects to postpone payment until CO. The proposed changes would also establish a mobility improvement credit and agreement section and require a pre-selection of the payment in lieu of amount prior to construction plan approval.

Additionally, in May 2018, City Council discussed reducing the burden of impact fee payments for developers of affordable housing projects. Proposed changes would allow a deferral request for a percentage of impact fees for affordable housing (including water, sewer, mobility, public facility, and recreation impact fees), to assist with financing and building affordable housing projects.

On February 21, 2019, the Planning and Zoning Board voted unanimously to recommend approval of the proposed amendments.

FISCAL/BUDGET IMPACT:

N/A



REQUESTED ACTION:

Approval of Ordinance No. 2019-18 based upon the findings contained in the Planning and Zoning Board memorandum.

MEMORANDUM



Community
Development
Department

TO: Shannon M. Lewis, City Manager

THRU: Cindy Dittmer, AICP, Community Development Director

FROM: Todd Corwin, AICP, Planner

RE: **Land Development Regulations (LDR-2019-01) and Zoning *Text Amendment* (Z-2019-1285AD) Capacity Reservation Fee Elimination and Transportation Impact Fee/Mobility Fee Amendments**

DATE: February 28, 2019

Applicant

City of Melbourne

Proposed Actions

Amending the following Sections of City Code:

- Chapter 58, Article II, III and IV “Extensions of Water and Sewer System”, “Water Service” and “Wastewater Treatment”;
- Appendix B, Article IX “Zoning Applications and Procedures”, “Formal Site Plan Review”.
- Appendix D, Chapter 3, Article I, VIII and X “General Provisions”, “Definitions” “Concurrency Review”, “School Concurrency”, “Mobility Districts” and Mobility Credits and Agreements” and “Appeals”;
- Appendix D, Chapter 10, Article I, II and III “Transportation Impact Fees”, “Time of Payment”, “Impact Fee Agreements and Security Requirements”, “Recreation Impact Fees” and “Public Facilities Impact Fees.

Location

The text amendments shall apply to all development activities on properties within the City of Melbourne.

History

The following information details the history regarding capacity reservation fees for concurrency and mobility standards purposes, as well as the timing for the payment of all impact fees.

2006: Capacity reservation fees were enacted to require a payment equal to a portion of the required transportation, water, and sewer impact fees. These fees were

required to be paid at the time of site plan/subdivision plat approval to reserve infrastructure capacity. The capacity reservation fee was set at 10% of the total impact fee payment. Also at this time, the payment of impact fees for water, sewer and transportation changed from Certificate of Occupancy (CO) to building permit.

- 2011: By resolution, the fee was annually approved at 10%, until 2011, the amount of the capacity reservation fee was changed from 10% to 1% of the total impact fee payment. The timeframes for site plan, subdivision, and construction plan approvals were extended at this time.
- 2011: The City's Comprehensive Plan is amended to include mobility districts and mobility strategies.
- 2011: City Code is amended to allow an owner/applicant to request deferral of the payment of impact fees to CO if the non-residential or mixed use project created two or more full time jobs
- 2013: Mobility districts and mobility strategies are established in City Code. A mobility deposit (for the payment in lieu of providing mobility improvements amount) is established at this time. The amount of this deposit is set as the same percentage as the capacity reservation fee.

Issues and Considerations

Capacity Reservation Fee: City Code requires that property owners pay water, sewer, public facilities, and recreation impact fees for all development projects. A property owner also is required to pay transportation impact fees or provide mobility improvements for development projects. City Code currently requires a one percent capacity reservation deposit for all projects for water, sewer and transportation/mobility. This deposit is due at the time of site plan/plat approval.

Timing of Impact Fee Payment: The remainder of the impact fee/payment in lieu of fees for water, sewer and transportation are due at the time of building permit issuance, while recreation and public facility impact fees are due at the time of CO. Code does provide an allowance for non-residential projects creating at least two full time jobs, to receive a deferral of payment of the water, sewer and transportation impact fees until CO.

Proposed Changes: The City is in the process of implementing EnerGov, an electronic development permit tracking system. This system will enhance the processing of development permits for both staff and the general public by automating workflow and tracking services while also providing citizen access. In order to maximize the potential of the EnerGov software, staff is proposing to eliminate the 1% capacity reservation fee and to change the time of payment of water, sewer and transportation impact fees from the time of building permit issuance to the time that a CO is issued for a project. At this time, most non-residential projects are already paying these fees at CO due to deferral mentioned above. With this change, all proposed impact or mobility fees will be paid at only one point in time, Certificate of Occupancy. This will provide a much easier to follow process.

The present capacity reservation fee process is cumbersome for both developers and City staff. It requires the separate payment and tracking of a small portion of the overall impact/mobility fee. Additionally, it requires the business/developer to pay fees very early in the process prior to construction financing. Through eliminating the capacity reservation fee and requiring the payment of all such fees at the time a CO is issued, the development review process will be streamlined and improved by standardizing the collection of all impact fees/mobility fees at the final step in the development review process.

Affordable Housing: Additionally, City Council had discussions back in May of 2018 regarding establishing a process for affordable housing projects that would assist with lessening the burden of impact fee payments. Staff has proposed language that would allow the identical deferral process that is currently available for transportation impact fees, to be allowed for water, sewer, mobility, recreation and public facilities impact fees. This allows for a portion of the impact fees to be deferred into the future based upon the income levels of proposed residents and the number of units constructed.

Proposed Primary Code Changes

- Elimination of the capacity reservation fee/mobility deposit requirement for approved development projects.
- Modification to the time of payment for impact fees from the issuance of a building permit to Certificate of Occupancy.
- Deferral of a percentage of impact fees for affordable housing, including: water, sewer, public facility, and recreation impact fees and mobility improvements (currently, only transportation impact fees are eligible for deferral).

While reviewing City Code regarding the capacity reservation fees, staff identified multiple other minor modifications that would update and refine City Code.

Additional Code Revisions

- Remove outdated language from the transportation impact/mobility improvement moratorium, which expired in 2016.

NOTE: A portion of the deleted text specifies the requirements for a complete construction plan submittal. Since this requirement does not exist elsewhere in Code, staff will bring a future Code change to City Council to enhance the references to the construction plan approval process.

- Remove the school concurrency tiered level of service (LOS) table, which was necessary for the initial implementation of school concurrency and is no longer relevant.
- Establish a mobility improvements credits and agreements section, when the cost of implementing mobility improvements exceeds the payment in lieu of amount.

NOTE: A similar section for transportation impact fees already exists in City Code.

- Modify language and create process enhancements to City Code, including:
 - Pre-selection of the payment in lieu of amount prior to construction plan approval,
 - Clarification regarding the first come/first serve rule, and
 - Contract language required for affordable housing deferrals that obligates the new owner to execute a mortgage in favor of the City in first position.

Staff from the Community Development, Code Compliance and Engineering Departments have worked together to develop the proposed modifications. The proposed Code changes are consistent with the City's Comprehensive Plan, the intent of the Zoning Code, and relevant engineering and planning practices. The proposed modifications will enhance the provisions of City Code and make the development process more user friendly for both City staff and the development community. Additionally, the changes for affordable housing will assist future developers in the ability to finance affordable housing projects.

On February 21, 2019, the Planning and Zoning Board voted unanimously to recommend approval of this request.

Recommendation

Approval of the ordinance based upon the findings and conditions contained in the Planning and Zoning Board memorandum.

MEMORANDUM



Community Development
Department

TO: Mayor and Council

FROM: Alan King, Chairman, Planning and Zoning Board

RE: Finding of Consistency (FOC-2019-02), Land Development Regulations (LDR-2019-01) and Zoning Amendment *Text Amendment* (Z-2019-1285AD) Capacity Reservation Fees – Transportation Impact Fees/Mobility Fees

DATE: February 22, 2019

APPLICANT: City of Melbourne

REPRESENTATIVE: City of Melbourne

The Planning and Zoning Board, at its regularly scheduled meeting of February 21, 2019, reviewed the above referenced request for a Finding of Consistency and Administrative Zoning Text Amendment.

Following review and discussion, the Planning and Zoning Board voted unanimously to recommend approval of FOC-2019-02, LDR-2019-01 and Z-2019-1285AD, amending the following in City Code:

- Chapter 58, Article II “Extensions of Water and Sewer System”, Division 2, Section 58-63 “General Policy”;
- Chapter 58, Article III “Water Service”, Division 2, Section 58-131, “Water Impact Fees”; and
- Chapter 58, Article IV “Wastewater Treatment”, Division 2, Section 58-242, “Sewer Impact Fees; Cost of Extension”.
- Appendix B, Article IX “Zoning Applications and Procedures”, Section 6 “Formal Site Plan Review”.
- Appendix D, Chapter 3, Article I “General Provisions”, Section 3.02 “Definitions” and Section 3.06, “Concurrency Review”;
- Appendix D, Chapter 3, Article VIII “School Concurrency”, Section 3.78 “Standard”;
- Appendix D, Chapter 3, Article X “Mobility Districts”, Section 3.102 “Procedure”, Section 3.106 “Mobility Credits and Agreements”, and Section 3.107 “Appeals”.
- Appendix D, Chapter 10, Article I “Transportation Impact Fees”, Section 10.03 “Time of Payment”, and Section 10.09 “Impact Fee Agreements and Security Requirements”.
- Appendix D, Chapter 10, Article II “Recreation Impact Fees”, Section 10.20 “Fee Required”.

- Appendix D, Chapter 10, Article III “Public Facilities Impact Fees”, Section 10.43 “Time of Payment”.

The Planning and Zoning Board’s recommendation is based upon the following findings:


Findings

1. The proposed modifications to City Code are consistent with the goals and objectives of the Comprehensive Plan and will assist in the execution of policies within the Comprehensive Plan. The proposed revisions will implement policy language that enhances the application of concurrency and mobility standards regulations.
2. The proposed revisions are specifically consistent with Transportation Element Policy 2.2.1 which states the City shall continue to coordinate with Brevard County and to collect transportation impact fees for new development and to prioritize capital projects needed to serve the demands for transportation services and facilities associated with new development. The proposed changes improve the performance of the concurrency and mobility sections of City Code.
3. The proposed revisions are also specifically consistent with Transportation Element Objective 1.3 which states the City of Melbourne shall support mobility within five mobility districts throughout the City with strategies that address alternative modes of transportation by providing context-appropriate sidewalks, bikeways, transit facilities, parking management and improvements that will contribute to specific and identified mobility needs within the City. The proposal will advance the implementation of mobility improvements within the City.
4. The zoning map and land development regulations may impose more restrictive densities and intensities of development based on height requirements, land coverage standards, setbacks, minimum lot size requirements, traffic and circulation standards, landscaping and breezeway requirements, and other such dimensional and development criteria. The revisions streamline and enhance the enforcement of City Code regulations.
5. The proposal will have no adverse effect on the City’s ability to provide adequate public services and facilities. The proposed changes will assist in the provision of transportation, water, sewer, public facilities, and recreation impact fees. Impact fees are utilized to improve infrastructure facilities throughout the City.
6. The proposed changes will not significantly change the general character of the City, cause depreciation of property values, or reduce the safety, light, and general

convenience of neighboring developments as the revisions support the development of various types of infrastructure facilities throughout the City.

7. The subject modification will further development and redevelopment efforts by making City Code more user-friendly to property owners, the development community, and City staff.
8. The proposed change is consistent with City Code's purpose of promoting the health, safety, education, cultural and economic welfare of the public by improving the Code requirements for concurrency and mobility standards regulations.
9. The proposal is consistent with Housing Element Policy 1.2.4 which states the City shall continue implementing regulations in the Land Development Code to provide incentives to developments with affordable housing and workforce housing units while analyzing their effectiveness. These incentives could include, but are not limited to, increased densities; flexible development regulations; and deferment, subsidy and/or waiver of building permit fees, impact fees and inspection fees. The proposed Code changes will permit deferred contracts for various impact fees including public facilities, recreation, water, and sewer (as well as the payment in lieu of amount for mobility improvements).
10. The proposed revisions are consistent with Capital Improvements Element Policy 1.3.4 which states the City shall continue to collect wastewater and potable water impact fees for new development. The proposal updates and enhances impact fee regulations.
11. The proposal is consistent with Capital Improvements Element Policy 1.3.5 which states the City shall use development impact fees and/or dedications of land or facilities as one possible funding source to acquire and develop recreation and open space facilities and areas for parks and recreation capital projects. The Code modifications strengthen and further Code requirements for impact fees.

Respectfully Submitted,


for
Alan King, Chairman
Planning and Zoning Board

ORDINANCE NO. 2019-18

AN ORDINANCE OF THE CITY OF MELBOURNE, BREVARD COUNTY, FLORIDA, RELATING TO CAPACITY RESERVATION AND TRANSPORTATION IMPACT FEES; MAKING FINDINGS; AMENDING CHAPTER 58 OF THE CITY CODE, ENTITLED "UTILITIES;" AMENDING SECTION 58-63, GENERAL POLICY; AMENDING SECTION 58-131, WATER IMPACT FEES; AMENDING SECTION 58-134, CAPACITY RESERVATION; AMENDING SECTION 58-242, SEWER IMPACT FEES; COST OF EXTENSION; AMENDING APPENDIX B OF THE CITY CODE, ENTITLED "ZONING;" AMENDING ARTICLE IX, ZONING APPLICATIONS AND PROCEDURES RELATING TO PAYMENT OF CAPACITY RESERVATION FEES; AMENDING APPENDIX D OF THE CITY CODE, ENTITLED "LAND DEVELOPMENT CODE;" AMENDING CHAPTER 3, CONCURRENCY; AMENDING SECTION 3.02, DEFINITIONS; AMENDING SECTION 3.06, CONCURRENCY REVIEW; AMENDING SECTION 3.78, STANDARD; AMENDING SECTION 3.102, PROCEDURE; AMENDING SECTION 3.103, PAYMENT IN LIEU OF CONSTRUCTION OF MOBILITY IMPROVEMENTS; AMENDING SECTION 3.106, DEFERRAL OF PAYMENT; AMENDING SECTION 3.107, APPEALS; AMENDING CHAPTER 10, IMPACT FEES; AMENDING SECTION 10.03, TIME OF PAYMENT; AMENDING SECTION 10.09, IMPACT FEE AGREEMENTS AND SECURITY REQUIREMENTS; AMENDING SECTION 10.20, FEE REQUIRED; AMENDING SECTION 10.43, TIME OF PAYMENT; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE. (FOC-2019-02/LDR-2019-01/Z-2019-1285AD)

WHEREAS, the City Code requires the payment of water, sewer, public facilities, and recreation impact fees for all development projects along with the payment of transportation impact fees and the provision of mobility improvements for development projects; and

WHEREAS, a one percent capacity reservation deposit is required for all projects for water, sewer and transportation/mobility at the time of site plan or plat approval; and

WHEREAS, the remaining impact fees and payment in lieu of fees for water, sewer, transportation and mobility improvements are due at the time of building permit issuance, while recreation and public facility impact fees are due at the time of issuance of a certificate of occupancy; and

WHEREAS, as part of implementing the electronic development permit tracking system, which will enhance the processing of development permits for staff and the general public, city staff is proposing to eliminate the one percent capacity reservation fee and to change the time of payment of water, sewer and transportation impact fees from the time of building permit issuance to the time that a certificate of occupancy is issued for a project; and

WHEREAS, by eliminating the capacity reservation fee and requiring the payment of all such fees at the time a certificate of occupancy is issued, the development review process will be streamlined and improved by standardizing the collection of all impact fees/mobility fees at the final step in the development review process; and

WHEREAS, as it relates to affordable housing projects, currently only transportation impact fees are eligible for deferral. This ordinance provides for deferral of a percentage of impact fees for affordable housing, including water, sewer, public facility, and recreation impact fees and mobility improvements; and

WHEREAS, while reviewing the City Code language relating to capacity reservation fees, city staff identified modifications that would update and refine the City Code; and

WHEREAS, such modifications include the removal of outdated language, establishment of mobility improvements credits and agreements, and process enhancements; and

WHEREAS, the proposed Code changes are consistent with the City of Melbourne Comprehensive Plan, the intent of the Zoning Code, and relevant engineering and planning practices; and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, reviewed the proposed changes to City Code and found same to be consistent with the City of Melbourne Comprehensive Plan at its February 21, 2019 meeting; and

WHEREAS, the City Council adopts the findings of the Planning and Zoning Board as its own and finds this ordinance to be in the promotion of the public health, safety, welfare, morals, public order, and aesthetics of the community and the region.

BE IT ENACTED BY THE CITY OF MELBOURNE, FLORIDA:

SECTION 1. That Chapter 58 of the City Code of Melbourne, Florida, is hereby amended to read as follows:

CHAPTER 58 – UTILITIES

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ARTICLE II. EXTENSIONS OF WATER AND SEWER SYSTEM

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DIVISION 2. POLICIES, RULES AND REGULATIONS

Sec. 58-63. General policy.

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(b) ~~As a condition of the issuance of a development order for a site plan, a preliminary development plan, a preliminary subdivision plat, a final subdivision plat, or for endorsement of an Florida Department of Environmental Protection (FDEP) permit application for a waterline extension, the applicant shall pay, at the time of issuance of the development order a nonrefundable capacity reservation fee, as defined in appendix D, chapter 3, for water and sewer service.~~

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ARTICLE III. WATER SERVICE

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DIVISION 2. RATES AND CHARGES

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Sec. 58-131. Water impact fees.

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(b) Payment of fees.

- (1) Applicants within the city limits. All owners or applicants for water service to serve a development within the city shall pay in full the water impact fees in effect at the time, and as a condition, of the first to occur of the following: establishment of a water meter connection, the issuance of building permit a certificate of occupancy or other the issuance of another final development order.
- ~~(2) Deferral of payment. An owner or applicant for a nonresidential or mixed use project within the city may request to defer the payment of these fees until the issuance of the certificate of occupancy, if such project will create jobs.~~
- ~~a. The creation of jobs may be temporary construction jobs and at least two permanent jobs that would be located within the new development.~~
- ~~b. The request to defer payment shall be administered by the community development director, or designee, upon receipt of a statement indicating the number of permanent and temporary jobs created.~~

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- ~~(32) Applicants outside the city limits. All owners or applicants for water service to serve a development project not in the city shall pay in full the water impact fees in effect at the time and as a condition of clearance of the waterline for service.~~
- (43) Any owners or developers of individual development projects not requiring a Florida Department of Environmental Protection (FDEP) permit or other approval and requiring only metered service shall pay in full the water impact fees in effect at the time and as a condition of installation of the connection to the water main. The aforesaid payment shall apply except as otherwise provided in an agreement between the city and a property owner or developer, or as otherwise provided in a development order stipulated to by the property owner or developer.
- ~~(5) Any capacity reservation fees previously paid per appendix D, chapter 3, shall be applied toward the amount of water impact fees owed at the time of payment of the then-applicable impact fee.~~
- (4) Applicants within the city limits. In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to payment of the water impact fee, the city shall, upon approval of an application from any eligible property owner, execute a contract to defer payment of a percentage of the water impact fee according to the provisions described in appendix D, chapter 10, section 10.09(b) of this city code.

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Sec. 58-134. Capacity reservation.

All owners or applicants for water service to serve a development project located outside the city shall comply with the Melbourne Concurrency Code, appendix D, chapter 3, article I and article IV, regarding potable water, except that the city's capacity reservation period timeframes and the city's capacity reservation fee schedules of payment shall not be modified by development orders issued by other jurisdictions without the express written consent of the city.

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ARTICLE IV. WASTEWATER TREATMENT

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DIVISION 2. WASTEWATER RATES AND CHARGES

Sec. 58-242. Sewer impact fees; cost of extension.

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- (b) Payment of fees.
- (1) All owners or applicants for sewer service shall pay in full the sewer impact fee amounts in effect at the time and, as a condition, the first to occur of the following: establishment of a water meter connection, the of issuance of a building permit certificate of occupancy, or the issuance of another final development order.

The aforesaid payment shall apply except as otherwise provided in an agreement between the city and a property owner or developer, or as otherwise provided in a development order stipulated to by the property owner or developer.

- ~~(2) Deferral of payment. An owner or applicant for a nonresidential or mixed use project within the city may request to defer the payment of these fees until the issuance of the certificate of occupancy, if such project will create jobs.~~
- ~~a. The creation of jobs may be temporary construction jobs and at least two permanent jobs that would be located within the new development.~~
- ~~b. The request to defer payment shall be administered by the community development director, or designee, upon receipt of a statement indicating the number of permanent and temporary jobs created.~~
- ~~(3) Any capacity reservation fees previously paid per appendix D, chapter 3, shall be applied toward the amount of sewer/wastewater treatment impact fees owed at the time of payment of the then applicable fee.~~
- (2) In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to the payment of the sewer impact fee, the city shall, upon approval of an application from any eligible property

owner, execute a contract to defer payment of the sewer impact fee pursuant to appendix D, chapter 10, section 10.09(b) of this city code.

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SECTION 2. That Appendix B, Article IX of the City Code of Melbourne, Florida, is hereby amended to read as follows:

ARTICLE IX. ZONING APPLICATIONS AND PROCEDURES

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Sec. 6. Formal site plan review.

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(E) Final approval and modifications to approved site plans.

~~(1) Capacity reservation fee; development fee. As required by Florida law, development approved with the formal site plan is contingent upon adequate transportation, water, and sewer capacity being reserved for the development. As required by chapters 3 and 10, appendix D, and chapter 58, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the capacity reservation fee for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 90 days of the date of rendition of the development order following approval by the city council or planning and zoning board. The development order shall be invalidated if payment of the capacity reservation fee has not been received by the City of Melbourne within this timeframe.~~

~~The terms "development" and "development order" shall be defined as set forth in F.S. § 163.3164. "Rendition" means the date of filing of a signed written final development order in the records of the city clerk or the planning and zoning board secretary, as applicable, following city council or planning and zoning board final development order approval.~~

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SECTION 3. That Appendix D, Chapter 3 of the City Code of Melbourne, Florida, is hereby amended to read as follows:

ARTICLE I. GENERAL PROVISIONS

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Sec. 3.02. Definitions.

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~~Capacity reservation extension fee means and refers to a fee used to extend an extension of the previously existing reservation of capacity for concurrency purposes in transportation, water or sewer capacity to serve a specific parcel of real property. A capacity reservation extension fee shall be determined periodically by adoption of a resolution by the city council based upon current economic and market conditions and demand for transportation, water and sewer capacity. The collection of this fee shall not occur until after the completion of a review of this chapter by the city council in 2014. The extension of the reservation of transportation, water or sewer may only be made if the capacity has been previously reserved and the pre-existing reservation has not expired. The capacity reservation extension fee is non-refundable, except for a one-time refund option as described in section 3.06. In the event that the reserved capacity is utilized before the reservation of capacity expires for which the capacity reservation extension fee has been paid, the fee paid may be applied as a credit against impact fees due and payable. The capacity reservation extension fee will only reserve transportation, water or sewer capacity and extend a finding of non-deficiency for an additional period beyond the effective date of the initial time of capacity reservation.~~

~~Capacity reservation fee means and refers to a fee used to reserve capacity for concurrency purposes in transportation, water or sewer capacity to serve a specific parcel of real property. Reservation of transportation, water or sewer capacity may only be made if the city first determines that there is a non-deficiency in transportation, water or sewer capacity to serve a specific and identifiable parcel of real property. A capacity reservation fee shall be determined annually by adoption of a resolution by the city council, based upon current economic and market conditions and demand for transportation, water and sewer capacity. The fee is non-refundable, except for a one-time refund option as described in section 3.06. In the event that the reserved capacity is utilized before the reservation of capacity expires for which the fee has been paid, the fee paid may be applied as a credit against impact fees due and payable. Reservation of capacity may not be moved from one parcel of real property to another parcel of real property.~~

~~Capacity reservation period means and refers to a period of time that occurs after a determination of available capacity for infrastructure is made and at which time sufficient capacity is held for a specific development project that shall remain valid for the time period as described in this section, subject to payment of the capacity reservation fee and the capacity reservation extension fee, as applicable.~~

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Sec. 3.06. Concurrency review.

(a) Concurrency evaluation finding of non-deficiency. A preliminary finding of non-deficiency for an active project by a concurrency evaluation for a public facility and service as set forth in this code shall remain valid until such time as final action is taken by the city council or planning and zoning board on the development order application granting, denying, or granting with conditions the development permit for which the concurrency evaluation was conducted; provided that application for the development permit shall be submitted simultaneously with the request for a finding of concurrency evaluation. ~~Payment of a capacity reservation fee, as defined herein, is required for the initial finding of water, sewer, and transportation non-deficiency and~~

~~reservation of capacity. Additionally, development projects requiring more than 40,000 gallons per day (gpd) of applicable water/wastewater usage shall be required to pay a capacity reservation fee equal to double or two times the capacity reservation fee periodically established by the city council and in effect at the time of payment of the fee. Payment of the capacity reservation fees shall be a condition of issuance of the following described development orders. Payment of capacity reservation fees shall not be required for educational facilities which are open to the public and operated by governmental agencies. Once a development permit has been issued, the concurrency evaluation finding of non-deficiency shall remain valid and in force for the following prescribed timeframes:~~

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- (2) ~~Formal site plans. For a formal site plan approval or conditional use approval with appurtenant site plan as set forth in appendix B, article IX, section 6(B), the capacity reservation period shall be 1,095 days following the date of rendition of that development order. The capacity reservation period may be extended for an additional 365 days based on the progress made toward the development of the project, such as obtaining the subsequent development orders, obtaining other agency permits, or commencement of site improvements or infrastructure.~~

~~The schedules for payment of capacity reservation fees shall apply except as otherwise provided in an agreement between the city and a property owner or developer, or as otherwise provided in a development order stipulated to by the property owner or developer.~~

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- (5) ~~Projects with a development agreement. If a developer's agreement with the city as provided in article VIII of this chapter is utilized, a concurrency evaluation may be conducted as a component of a developer's agreement, and if concurrency is found or guaranteed, the capacity reservation period timeframe for the finding's validity and the capacity reservation fee payment schedule shall be set forth in the agreement.~~
- (6) ~~Projects initiated through the engineering department. For all site plans not meeting the thresholds for formal site plan under paragraph (2) above, the capacity reservation period shall be 1,095 days following the date of rendition of that development order conditioned upon payment of the capacity reservation fee. The capacity reservation period may be extended for an additional ~~1,095~~ 365 days based on the progress made toward the development of the project such as obtaining the subsequent development orders, obtaining other agency permits or commencement of site improvements or infrastructure.~~

~~* * * *~~

~~(b) One-time refund of capacity reservation fees or one-year extension for projects that have maintained development approvals. All property owners for previously approved development projects (approved prior to June 15, 2011) that paid the original ten percent capacity~~

~~reservation fee and have remained in a current approved status by the city, may choose a one-time opportunity to recover their current capacity reservation fee balance, in exchange for relinquishing their development approval and capacity reservation, if such fees have not been expended or committed as debt service. Alternatively, a property owner may opt to request a one-year extension of the development approval based upon the progress of the project. This would provide the development project one additional year (until December 31, 2014) to obtain a building permit and payment of impact fees, retaining capacity reservation for the project.~~

(eb) Expiration of concurrency evaluation finding of non-deficiency. Where any of the applicable timeframes, as set forth in (a) above, for a particular project expire, a new concurrency evaluation shall be required prior to application for the next development permit. Any vesting period relating to concurrency may be considered void, if the applicant fails to timely perform all requirements to keep the vesting current, including ~~the payment of all fees pursuant to a capacity reservation for a particular public facility or service~~ timely obtaining a capacity reservation extension from the city. If the applicant maintains a capacity reservation on a first come, first serve basis for a particular public facility or service, as set forth in subsection (c) below, the expiration of the concurrency evaluation finding of non-deficiency shall not necessarily nullify said capacity reservations.

* * * *

(gf) First come/first served rule. If the community development director shall determine that the grant of a development order for a project would violate this chapter, because: (1) An affected roadway or link is operating below the level of service set by the comprehensive plan and the transportation impacts generated by the project would not be handled by the link or roadway affected by the project concurrent with the generation of transportation impacts by said project; (2) Wastewater treatment facility, park and recreation, drainage retention and stormwater management system, solid waste disposal facility, or potable water, public facilities and services capacity is not available to adequately serve the proposed project such that said public facilities and services will operate at or above the level of service set by the comprehensive plan after impacts generated by the project occur; (3) The community development director's determination is not overturned on an appeal pursuant to section 3.08 hereof; or (4) No other provision in this code is applicable to permit the proposed project to receive a non-final development order, the applicant may request that the project application be placed on a waiting list for reservation of capacity for all public facilities and services deemed by the city to be affected by the project. ~~Simultaneous with the applicant's request to be placed on a reservation list as specified in this subparagraph, the applicant shall be required to pay a fee to be fixed as part of a schedule by resolution of the city council to reserve priority over subsequent applications which are served by the same public facilities and services. Said reservation shall be valid from the date that the application is filed and the fee paid until December 31 of the year in which the application is filed and the fee paid. To keep a reservation of capacity for a project current a request for renewal of the reservation must be filed by no later than January 31 of the year for which the reservation is being renewed. The request for renewal shall be accompanied by a fee to be fixed as part of a schedule adopted by resolution of the city council, and the project reservation of capacity may be renewed in like fashion for each succeeding year thereafter, until such time as a letter determination of concurrency non-deficiency can be issued for all affected public facilities and services. The failure to renew the reservation of capacity by January 31 of any one year shall~~

~~immediately and automatically invalidate the reservation, and the project's reservation of capacity shall be immediately removed from the waiting list. Once capacity has been determined to be available, All applications for reservation of capacity shall then advance forward on a first come/first served basis. Notice of availability shall be provided to the owner as identified on the county property appraiser's website. The reservation of capacity shall run with the parcel of land and shall be transferable from original applicant to subsequent parcel of land owners and developers of the same parcel of land. Under no circumstances may a reservation of capacity be transferred from one parcel of land to another or be amended to include a different parcel of land, or portion thereof, not originally subject to the capacity reservation. Upon filing of an application for capacity reservation, capacity on all non-deficient public facilities and services pursuant to subsection (c) hereof shall be allocated or reserved to the proposed project until such time as the deficient public facility and service for which an applicant is on a reservation list pursuant hereto shall be non-deficient as to the proposed project. Thereafter, the finding of non-deficiency for all affected public facilities and services shall remain valid for the time provided in and to the extent provided in subsection (a) hereof.~~

- ~~(1) All substantial changes shall require a new concurrency application and said project shall be removed from the waiting list.~~

~~* * * *~~

~~Note— It should be noted that section 5 of Ord. No. 2011-18 provides, "In conjunction with this ordinance, the City Council will extend the project approvals currently in the system that have paid the original ten percent capacity reservation fee for two years until June 15, 2013. The projects will be eligible for one additional year of approval if it can be demonstrated that progress has been made since this time."~~

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ARTICLE VIII. SCHOOL CONCURRENCY

Sec. 3.78. Standard.

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(b) Level of service. To ensure adequate capacity for each year of the five-year planning period and over the long-term planning timeframe, the following LOS is established for the public schools in each concurrency service area (CSA):

- ~~(1) A tiered level of service shall be in effect for the five-year planning period, terminating in school year 2011-2012. Upon achieving the LOS standard of 100 percent permanent FISH capacity, by school year 2011-2012, the tiered LOS will be terminated.~~

Tiered Level of Service Table

	2007—08	2008—09	2009—10	2010—11	2011—12
--	---------	---------	---------	---------	---------

Elementary	127%	130%	115%	105%	100%
Middle	122%	120%	100%	100%	100%
Junior/ senior high	133%	135%	110%	105%	100%
High	139%	130%	115%	100%	100%

(21) Beginning in school year 2011—2012, an LOS of 100% of capacity as determined by the Florida Inventory of School Houses shall be established for each school within a specific CSA.

* * * *

ARTICLE X. MOBILITY DISTRICTS

* * * *

Sec. 3.102. Procedure.

* * * *

(e) Moratorium for commercial and industrial uses.

~~(1)(A) In order to establish an incentive for new development that will provide new jobs within the city, beginning on April 1, 2014 and ending July 31, 2016, the city council hereby establishes and imposes a two-year and four-month moratorium on the requirement that mobility improvements be provided by a project developer pursuant to this article on any commercial and industrial use development project which would otherwise be subject to the requirement to provide mobility improvements pursuant to this article. To be subject to this moratorium and to be exempt from the requirement of providing mobility improvements pursuant to this article for a specific type of development on a particular parcel of real property, a property owner, contractor, developer, or applicant must during the effective period of the moratorium submit a complete building permit application for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section (e)(1)(B) and submit either: (i) a complete construction plan approval application; (ii) written verification from the city engineer that a construction plan for the development project is under review by the city engineer; or (iii) written verification from the city engineer that approval of the construction plan has occurred and is unexpired and active.~~

~~(B) As used in subsection (e)(1)(A), the term "commercial or industrial use" includes but is not limited to retail commercial uses, professional office, restaurant, gasoline station, car wash, hotel, motel, medical/dental offices, banks, industrial, manufacturing, warehousing, but excludes residential, institutional and recreational uses. Commercial and industrial uses shall be determined by the community development director by considering the actual use of a proposed development project.~~

- ~~(C) — If a building permit is issued during the moratorium and the permit remains active through extensions of active status granted after the expiration of the moratorium but legally issued by the building official (code compliance director), the moratorium shall continue to apply to the development permitted by the building permit. If a complete building permit application is submitted along with either a complete construction plan approval application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, during the moratorium, and the applications are actively maintained and pursued to approval in good faith, but a building permit is not issued to the property owner, contractor, developer, or other applicant until after the expiration of the moratorium, the moratorium shall be applicable to the development described in the complete building permit application and the complete construction plan application or approval.~~
- ~~(D) — If a property owner, contractor, developer, or other applicant fails to submit a complete building permit application and either a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, all during the effective dates of the moratorium, for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section of the code, then the aforesaid property owner, contractor, developer, or other applicant's development project will not be subject to the mobility improvement moratorium provided by this subsection (e), and all requirements of this article for provision of mobility improvements must be satisfied by said development project.~~
- ~~(E) — This subsection is applicable to development projects for the time period of the moratorium which development projects are being developed pursuant to a development or developer's agreement between the city and a property owner or developer of the development project identified in the agreement; provided that in the case of a development or developer's agreement which contains specific provisions requiring the provision or installation of specified mobility improvements this subsection will not apply.~~
- ~~(F) — No capacity reservation deposit for transportation concurrency required to be assessed pursuant to this chapter will be levied against any commercial or industrial development project, for which a complete building permit application and a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, is submitted during the effective dates of the moratorium provided for by this subsection, or for which a building permit is issued for a commercial or industrial project. Notwithstanding the foregoing, a transportation concurrency evaluation and a reservation of transportation concurrency will be required as otherwise provided for in this chapter.~~

- ~~(2) To be a complete building permit application, as set forth in this section, a property owner, contractor, developer, or applicant must submit:~~
- ~~(A) In writing to the building official (code compliance director) the following information:~~
- ~~(i) Name of project;~~
 - ~~(ii) Site address;~~
 - ~~(iii) Legal description of property;~~
 - ~~(iv) Brevard County Property Appraiser's ad valorem tax parcel identification number;~~
 - ~~(v) Owner/project developer's complete mailing address, e-mail address, and telephone number;~~
 - ~~(vi) General contractor's firm name, if known, qualifier's name, license number, complete mailing address, e-mail address, telephone number, and fax number;~~
 - ~~(vii) Fee simple title holder's name, complete mailing address, e-mail address, and telephone number;~~
 - ~~(viii) Development project architect/engineer name, complete mailing address, e-mail address, and telephone phone number;~~
 - ~~(ix) Identity of the permit type (i.e., commercial) and city site plan number;~~
 - ~~(x) Description of work, value of construction and area of construction;~~
 - ~~(xi) Sub-contractors may be listed as "to be determined" until time of building permit issuance to the general contractor; and~~
 - ~~(xii) Notarized signature of the fee simple title holder/owner or legally authorized agent of the building permit application;~~
- ~~(B) To the building official (code compliance director) two complete sets of building plans for construction of the development project which building plans comply with section 107.1, 107.2 and 107.3.5, 2010 Florida Building Code Building as adopted pursuant to section 13.80(a), appendix D, of the city code;~~
- ~~(C) To the building official (code compliance director) the full building plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1. (2)e.1. Building Permits, and the life safety plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1.(2)e.2. Building Permits.~~

~~Notwithstanding the schedule set forth in Resolution No. 1680, section 1. (2) E.1. and 2., the plan checking fees shall be paid for 100% of the full plan checking fee at the time of the submittal of the complete building permit application, and all such fees shall be non-refundable;~~

~~(3) To be a complete construction plan application, as set forth in this section, a property owner, contractor, developer, or applicant, must submit:~~

~~(A) In writing to the city engineer's office the following information:~~

~~(i) Complete application for construction site plan review including the information included in subsection (e) (2) (A) above and such other information as specified by the city engineer;~~

~~(ii) Affidavit of ownership executed by fee simple property owner before a notary public authorizing the applicant to submit an application for construction plan review;~~

~~(iii) Concurrency review application or current certificate of concurrency;~~

~~(iv) Boundary and topographical survey, and tree survey, all prepared by and certified to by a Florida-licensed and registered professional mapper and surveyor pursuant to F.S. ch. 472;~~

~~(v) Drainage calculations certified to by a Florida-licensed and registered professional engineer pursuant to F.S. ch. 471, as required by section 50-51, City Code of Ordinances;~~

~~(vi) Estimated cost of project as certified to by a Florida professional engineer licensed and registered pursuant to F.S. ch. 471; and~~

~~(vii) Estimated cost of dedicated utilities;~~

~~(B) To the city engineer's office, the full construction plan review fee as set forth in City of Melbourne Resolution No. 2058, section 1. Development Fees. Notwithstanding the schedule set forth in Resolution No. 2058, section 1., the construction plan review fee shall be paid for 100 percent of the full construction plan review fee, and all such fees shall be non-refundable. As set forth in this paragraph (3) and (5), the term "construction plans" refers to those plans required to be prepared pursuant to this code as set forth in subparagraph (C) of the City Code below; and~~

~~(C) To the city engineer 12 complete sets of construction plans for construction of the development site work certified to and sealed by a licensed and registered Florida engineer or architect. As utilized in this paragraph, the term "complete sets of construction plans for construction of the development" includes a site plan; water and sanitary sewer plan (including a composite map showing the location of all utilities including water, wastewater,~~

~~telephone, gas, and electric); grading, paving and stormwater management drainage plan pursuant to chapter 50 and articles XV and XVI, chapter 9, appendix D, City of Melbourne Code of Ordinances; tree protection, landscape and irrigation plan pursuant to article XV, chapter 9, appendix D, City of Melbourne Code of Ordinances; erosion and sedimentation control plan pursuant to article XVI, chapter 9, appendix D, City of Melbourne code of ordinances; and signing and striping plan. As utilized in this paragraph, the term "construction plans" includes a site location map; legal description of the property; legend; scale; North arrow; name of development; site acreage and square footage; existing zoning and future land use designation; preparation and revision dates; name, address, phone number and e-mail address of the owner, owner's representative, engineer/architect, or other involved individuals; percentage and acreage of impervious area and building coverage; general statement of character and intent of use; building and use square footages; building height; data information for future phases; number of units and intensity of use calculations; phases with phase lines and explanations; interior landscaping calculations; parking calculations; existing conditions including abutting streets (including name, right-of-way width from the centerline total width, driveways, medians and median cuts, sidewalk and bike paths, ditches/drainageways, adjacent zoning and land use, adjacent site improvements; access points within 100 feet, adjacent side layout within 100 feet of the project site, drainage conditions, elevations, fire hydrants within 500 feet, other existing conditions proposed to remain on site including access points (location and width), structure (square footage, height, and use), parking areas, easements (location, dimension, purpose, and maintenance responsibility), electric light poles, and surface water); and proposed structures (including height, square footage, stories, use, location and dimensions), driveways, approaches, curb cuts, deceleration lanes, sidewalks/bike paths/parking spaces, loading area; dumpster enclosure and recycling pads, handicap access/parking/curbs/pavement details, proposed open space, native vegetative areas, traffic control devices, screening/buffering, recreational facilities (size, type, and location), drainage (all retention area locations to include proposed conveyance swales, slopes, sections, outfall structures, flow patterns, skimmers, and inlets), outside light locations, and water and sewer lines.~~

- ~~(4) — The city's building official (code compliance director) is empowered to determine whether a building permit application is complete or incomplete pursuant to paragraph (2) above. The building official's (code compliance director's) determination may be appealed to the planning and zoning board pursuant to section 3.105, appendix D, within a reasonable time not to exceed 30 days following the date of rendition of the building official's (code compliance director's) determination that a building permit application is complete or incomplete. To initiate an appeal, a notice of appeal specifying the ground thereof must be timely filed as set forth above with the building official (code compliance director) and with the secretary to the planning and zoning board. The building official (code compliance director) shall within 15 days thereafter transmit to the planning and zoning board all papers constituting the record upon which the action appealed from was taken.~~

~~The secretary to the planning and zoning board after receipt of the record shall within 60 days fix a time for hearing of the appeal thereafter and give the public notice thereof at least 15 days in advance of the public hearing as well as notice to the parties in interest, and the planning and zoning board will decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.~~

- ~~(5) The city engineer is empowered to determine whether an application for approval of construction plans has been submitted in a complete form pursuant to paragraph (3) above. The city engineer's determination may be appealed in the manner set forth in section 3.105, appendix D, to the planning and zoning board within a reasonable time not to exceed 30 days following the date of rendition of the city engineer's determination that a construction plan application is complete. Appeals will be taken to the planning and zoning board, notwithstanding the wording set forth in section 3.105, appendix D, referencing appeals to the zoning board of adjustment.~~
- ~~(6) The moratorium on the requirement that mobility improvements be provided for a development project arising from the submittal of a complete building permit application and a complete construction plan application, verification that a construction plan is under review, or verification that a construction plan approval is active and unexpired, all during the moratorium period, applies to the development project and parcel of land described in the complete building permit application and complete construction plan application or other verification and is not transferable to a different development project or to a substantially different parcel of land.~~

Sec. 3.103. Payment in lieu of construction of mobility improvements.

(a) Payment. A payment in lieu of constructing the required mobility improvements may be provided by the developer or property owner. This payment must be at least equal to the amount of transportation impact fees required pursuant to section 10.04, appendix D, of the City Code. Fifty percent of the payment in lieu amount will be placed in a reserve fund for the construction of mobility projects listed in the capital improvements element of the comprehensive plan or for the development of complete streets projects identified in the transportation element of the comprehensive plan. The remaining 50 percent of the payment amount will be deposited into the transportation impact fee trust fund and used in accordance with section 10.07, appendix D, of the city code. The fee required by this article shall be paid prior to issuance of a certificate of completion or a certificate of occupancy and shall be the fee established at the time of payment.

(b) Required deposit. ~~If a developer or property owner chooses to make a payment in lieu of providing mobility improvements, a mobility improvements deposit, equal to a percentage of the transportation impact fees that would be required per section 10.04, appendix D, city code, will be required within 90 days of site plan, preliminary plat, or final plat approval. The amount of this deposit will be determined annually by adoption of a resolution by the city council, based upon current economic and market conditions. This deposit will be placed in reserve for the construction of mobility projects. Final payment of the remaining balance will be due at the time a building permit is issued by the city. For residential and commercial subdivisions, payment is due as building permits are issued prior to the issuance of a certificate of completion or a certificate of occupancy for each individual lot. The amount paid for each lot shall be dependent upon the~~

development that occurs on said lot. The amount paid for a residential subdivision project should equal the payment in lieu of providing mobility improvements amount determined at preliminary plat, construction plan or final plat approval for the overall project.

* * * *

~~(d) — Moratorium for commercial and industrial uses.~~

~~(1)(A) In order to establish an incentive for new development that will provide new jobs within the city, beginning on April 1, 2014 and ending July 31, 2016, the city council hereby establishes and imposes a two-year and four-month moratorium on the levy and assessment of mobility fees in lieu of providing mobility improvements pursuant to this article on any commercial and industrial use development project which would otherwise be subject to the requirement to provide mobility improvements or payment of mobility fees in lieu of providing the required mobility improvements pursuant to this article. To be subject to this moratorium and to be exempt from the requirement of paying a mobility fee in lieu of providing mobility improvements for a specific type of development on a particular parcel of real property, a property owner, contractor, developer, or applicant must during the effective period of the moratorium submit a complete building permit application for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section (d)(1)(B) and submit either: (i) a complete construction plan approval application; (ii) written verification from the city engineer that a construction plan for the development project is under review by the city engineer; or (iii) written verification from the city engineer that approval of the construction plan has occurred and is unexpired or active.~~

~~(B) — As used in subsection (d)(1)(A), the term "commercial or industrial use" includes but is not limited to retail commercial uses, professional office, restaurant, gasoline station, car wash, hotel, motel, medical/dental offices, banks, industrial, manufacturing, warehousing, but excludes residential, institutional and recreational uses. Commercial and industrial uses shall be determined by the community development director by considering the actual use of a proposed development project.~~

~~(C) — If a building permit is issued during the moratorium and the permit remains active through extensions of active status granted after the expiration of the moratorium but legally issued by the building official (code compliance director), the moratorium shall continue to apply to the development permitted by the building permit. If a complete building permit application is submitted along with either a complete construction plan approval application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, during the moratorium, and the applications are actively maintained and pursued to approval in good faith, but a building permit is not issued to the property owner, contractor, developer, or other applicant until after the expiration of the moratorium, the moratorium shall be applicable to the development described in the complete~~

~~building permit application and the complete construction plan application or approval.~~

- ~~(D) — If a property owner, contractor, developer, or other applicant fails to submit a complete building permit application and either a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, all during the effective dates of the moratorium, for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section of the code, then the aforesaid property owner, contractor, developer, or other applicant's development project will not be subject to the moratorium on the payment of mobility fees in lieu of providing mobility improvements provided by this subsection (d), and all requirements of this article for payment of mobility fees in lieu of the provision of mobility improvements must be satisfied by said development project.~~
- ~~(E) — This subsection is applicable to development projects for the time period of the moratorium which development projects are being developed pursuant to a development or developer's agreement between the city and a property owner or developer of the development project identified in the agreement; provided that in the case of a development or developer's agreement which contains specific provisions requiring the provision or installation of specified mobility improvements this subsection will not apply.~~
- ~~(F) — No capacity reservation deposit for transportation concurrency required to be assessed pursuant to this chapter will be levied against any commercial or industrial development project, for which a complete building permit application and a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, is submitted during the effective dates of the moratorium provided for by this subsection, or for which a building permit is issued for a commercial or industrial project. Notwithstanding the foregoing, a transportation concurrency evaluation and a reservation of transportation concurrency will be required as otherwise provided for in this chapter.~~
- ~~(2) — To be a complete building permit application, as set forth in this section, a property owner, contractor, developer, or applicant must submit:
 - ~~(A) — In writing to the building official (code compliance director) the following information: (i) name of project; (ii) site address; (iii) legal description of property; (iv) Brevard County Property Appraiser's ad valorem tax parcel identification number; (v) owner/project developer's complete mailing address, e-mail address, and telephone number; (vi) general contractor's firm name, if known, qualifier's name, license number, complete mailing address, e-mail address, telephone number, and fax number; (vii) fee simple title holder's name, complete mailing address, e-mail address, and telephone number; (viii) development project architect/engineer name, complete~~~~

~~mailing address, e-mail address, and telephone phone number; (ix) identity of the permit type (i.e., commercial) and city site plan number; (x) description of work, value of construction and area of construction; (xi) sub-contractors may be listed as "to be determined" until time of building permit issuance to the general contractor; and (xii) notarized signature of the fee simple title holder/owner or legally authorized agent of the building permit application;~~

~~(B) To the building official (code compliance director) two complete sets of building plans for construction of the development project which building plans comply with sections 107.1, 107.2 and 107.3.5, 2010 Florida Building Code-Building as adopted pursuant to section 13.80(a), appendix D, of the city code;~~

~~(C) To the building official (code compliance director) the full building plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1.(2)e.1. Building Permits, and the life safety plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1.(2)e.2. Building Permits. Notwithstanding the schedule set forth in Resolution No. 1680, section 1.(2)e.1. and 2., the plan checking fees shall be paid for 100 percent of the full plan checking fee at the time of the submittal of the complete building permit application, and all such fees shall be non-refundable;~~

~~(3) To be a complete construction plan application, as set forth in this section, a property owner, contractor, developer, or applicant, must submit:~~

~~(A) In writing to the city engineer's office the following information:~~

~~(i) Complete application for construction site plan review including the information included in subsection (d)(2)(A) above and such other information as specified by the city engineer;~~

~~(ii) Affidavit of ownership executed by fee simple property owner before a notary public authorizing the applicant to submit an application for construction plan review;~~

~~(iii) Concurrency review application or current certificate of concurrency;~~

~~(iv) Boundary and topographical survey, and tree survey, all prepared by and certified to by a Florida licensed and registered professional mapper and surveyor pursuant to F.S. ch. 472;~~

~~(v) Drainage calculations certified to by a Florida licensed and registered professional engineer pursuant to F.S. ch. 471, as required by section 50-51, City Code of Ordinances;~~

~~(vi) Estimated cost of project as certified to by a Florida professional engineer licensed and registered pursuant to F.S. ch. 471; and~~

~~(vii) Estimated cost of dedicated utilities;~~

~~(B) To the city engineer's office, the full construction plan review fee as set forth in City of Melbourne Resolution No. 2058, section 1. Development Fees. Notwithstanding the schedule set forth in Resolution No. 2058, section 1., the construction plan review fee shall be paid for 100 percent of the full construction plan review fee, and all such fees shall be non-refundable. As set forth in this paragraph (3) and paragraph (5), the term "construction plans" refers to those plans required to be prepared pursuant to this code as set forth in subparagraph (C) of the City Code below; and~~

~~(C) To the city engineer 12 complete sets of construction plans for construction of the development site work certified to and sealed by a licensed and registered Florida engineer or architect. As utilized in this paragraph, the term "complete sets of construction plans for construction of the development" includes a site plan; water and sanitary sewer plan (including a composite map showing the location of all utilities including water, wastewater, telephone, gas, and electric); grading, paving and stormwater management drainage plan pursuant to chapter 50 and articles XV and XVI, chapter 9, appendix D, City of Melbourne Code of Ordinances; tree protection, landscape and irrigation plan pursuant to article XV, chapter 9, appendix D, City of Melbourne code of ordinances; erosion and sedimentation control plan pursuant to article XVI, chapter 9, appendix D, City of Melbourne Code of Ordinances; and signing and striping plan. As utilized in this paragraph, the term "construction plans" includes a site location map; legal description of the property; legend; scale; North arrow; name of development; site acreage and square footage; existing zoning and future land use designation; preparation and revision dates; name, address, phone number and e-mail address of the owner, owner's representative, engineer/architect, or other involved individuals; percentage and acreage of impervious area and building coverage; general statement of character and intent of use; building and use square footages; building height; data information for future phases; number of units and intensity of use calculations; phases with phase lines and explanations; interior landscaping calculations; parking calculations; existing conditions including abutting streets (including name, right-of-way width from the centerline total width, driveways, medians and median cuts, sidewalk and bike paths, ditches/drainageways, adjacent zoning and land use, adjacent site improvements; access points within 100 feet, adjacent side layout within 100 feet of the project site, drainage conditions, elevations, fire hydrants within 500 feet, other existing conditions proposed to remain on site including access points (location and width), structure (square footage, height, and use), parking areas, easements (location, dimension, purpose, and maintenance responsibility), electric light poles, and surface water); and proposed structures (including height, square footage, stories, use, location and dimensions), driveways, approaches, curb cuts, deceleration lanes, sidewalks/bike paths/parking spaces, loading area; dumpster enclosure and recycling pads, handicap access/parking/curbs/pavement details, proposed open space, native vegetative areas, traffic control devises,~~

screening/buffering, recreational facilities (size, type, and location), drainage (all retention area locations to include proposed conveyance swales, slopes, sections, outfall structures, flow patterns, skimmers, and inlets), outside light locations, and water and sewer lines.

- (4) ~~The city's building official (code compliance director) is empowered to determine whether a building permit application is complete or incomplete pursuant to paragraph (2) above. The building official's (code compliance director's) determination may be appealed to the planning and zoning board pursuant to section 3.105, appendix D, within a reasonable time not to exceed 30 days following the date of rendition of the building official's (code compliance director's) determination that a building permit application is complete or incomplete. To initiate an appeal, a notice of appeal specifying the ground thereof must be timely filed as set forth above with the building official (code compliance director) and with the secretary to the planning and zoning board. The building official (code compliance director) shall within 15 days thereafter transmit to the planning and zoning board all papers constituting the record upon which the action appealed from was taken. The secretary to the planning and zoning board after receipt of the record shall within 60 days fix a time for hearing of the appeal thereafter and give the public notice thereof at least 15 days in advance of the public hearing as well as notice to the parties in interest, and the planning and zoning board will decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.~~
- (5) ~~The city engineer is empowered to determine whether an application for approval of construction plans has been submitted in a complete form pursuant to paragraph (3) above. The city engineer's determination may be appealed in the manner set forth in section 3.105, appendix D, to the planning and zoning board within a reasonable time not to exceed 30 days following the date of rendition of the city engineer's determination that a construction plan application is complete. Appeals will be taken to the planning and zoning board, notwithstanding the wording set forth in section 3.105, appendix D, referencing appeals to the zoning board of adjustment.~~
- (6) ~~The moratorium on the requirement that mobility fees be paid in lieu of the provision of mobility improvements for a development project arising from the submittal of a complete building permit application and a complete construction plan application, verification that a construction plan is under review, or verification that a construction plan approval is active and unexpired, all during the moratorium period, applies to the development project and parcel of land described in the complete building permit application and complete construction plan application or other verification and is not transferable to a different development project or to a substantially different parcel of land.~~

* * * *

Sec. 3.106. Deferral of payment Mobility credits and agreements.

~~(a) — An owner or applicant for a nonresidential or mixed use project within the city may request to defer the payment in lieu providing mobility improvements fee until the issuance of the certificate of occupancy, if such project will create jobs.~~

~~(b) — The creation of jobs may be temporary construction jobs and at least two permanent jobs that would be located within the new development.~~

~~(c) — The request to defer payment shall be administered by the community development director, or his or her designee, upon receipt of a statement indicating the number of permanent and temporary jobs created.~~

(a) — If the cost of implementing mobility improvements exceeds the payment in lieu of amount, the developer may request credit for the additional assessment pursuant to appendix D, chapter 10, section 10.06 and section 10.09 of this city code.

(b) — In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to the imposition of the payment in lieu of amount, the city shall, upon approval of an application from any eligible new property owner, execute a contract to defer payment the payment in lieu of amount pursuant to appendix D, chapter 10, section 10.09(b) of this city code.

(c) — All appeals regarding credits shall be made pursuant to appendix D, chapter 10, section 10.10 of this city code.

Sec. 3.107. Appeals

(a) Interpretation of mobility improvement provisions. All questions of interpretation regarding the provision of mobility improvements, as embodied in this article X, of chapter 3, appendix D, will be first presented to the community development director or the city engineer, as identified below. In interpreting this article X, chapter 3, appendix D, City Code, the community development director, ~~with the assistance of~~ or the city engineer, will be first guided by the plain meaning of the words and terms in this article X, chapter 3, appendix D, City Code, and second by the intent expressed therein. The community development director or city engineer will make interpretations by interpreting the Code as a whole and not by taking specific words or clauses in isolation. Any interpretation will be subject to rendition in a written, dated form. Thereafter, the zoning board of adjustment will decide appeals filed by an aggrieved party where it is alleged that there is error in any order, requirement, decision, or determination made by the community development director in interpreting this code and the planning and zoning board will decide appeals filed by an aggrieved party where it is alleged that there is error in any order, requirement, decision or determination made by the city engineer in interpreting this code.

(b) Decisions that may be appealed. Appeals may be taken to the zoning board of adjustment or planning and zoning board based upon any of the following decisions:

- (1) Interpretation by the community development director of the meaning of wording in appendix D, relating mobility districts and mobility improvements; sections 3.101 through 3.105, ~~40.01, 40.02, 40.04, and 40.07~~, appendix D, relating to mobility districts and mobility improvements; all in the City Code;

- (2) A determination regarding the weighted value of an applicable mobility improvement pursuant to section 3.102, appendix D;
- ~~(3) A determination by the economic development director as to the deposit calculations pursuant to section 3.103 (a) and section 3.103 (b), appendix D;~~
- (43) A determination as to the assessment of transportation impact fees that must be paid if a developer or property owner elects to provide some mobility improvements and some impact fees pursuant to sections 3.103 and 10.01, appendix D of this code;
- (54) Interpretation by the city engineer in consultation with the community development director with regard to the use classification of a particular development project pursuant to this article (e.g., whether the development is an industrial or commercial project); or
- (65) Interpretation by the city engineer in consultation with the community development director of the application of this article to a particular development project.

* * * *

(d) Method of appeal. Appeals to the zoning board of adjustment or planning and zoning board must be made within a reasonable time not to exceed 30 days following the date of rendition of the interpretation or other determination as set forth in subsection (b) above by filing with the official making the determination, and with the secretary to the zoning board of adjustment or planning and zoning board, a notice of appeal specifying the ground thereof. The official making the determination will within 15 days thereafter transmit to the zoning board of adjustment or planning and zoning board all papers constituting the record upon which the action appealed from was taken. The secretary to the zoning board of adjustment or planning and zoning board within 60 days after receipt of the record will fix a time for hearing of the appeal and give public notice thereof at least 15 days in advance of the public hearing as well as notice to the parties in interest. Thereafter, the zoning board of adjustment or planning and zoning board will hear and decide said appeal within a reasonable time. At the hearing, any party may appear in person, by agent, or be represented by an attorney-at-law.

SECTION 4. That Appendix D, Chapter 10 of the City Code of Melbourne, Florida, is hereby amended to read as follows:

ARTICLE I. TRANSPORTATION IMPACT FEES

* * * *

Sec. 10.03. Time of payment

(a) ~~The fee required by this article shall be paid prior to at the time of issuance of a certificate of completion or a certificate of occupancy building permit and shall be the fee established at the time of payment.~~

(b) ~~—Deferral of payment. An owner or applicant for a nonresidential or mixed use project within the city may request to defer the payment of these fees until the issuance of the certificate of occupancy, if such project will create jobs.~~

(1) ~~—The creation of jobs may be temporary construction jobs and at least two permanent jobs that would be located within the new development.~~

(2) ~~—The request to defer payment shall be administered by the community development director, or designee, upon receipt of a statement indicating the number of permanent and temporary jobs created.~~

(c) ~~—Any capacity reservation fees previously paid per appendix D, chapter 3, Concurrency, shall be applied toward the amount of transportation impact fees in effect at the time of payment of the then applicable impact fee.~~

(db) ~~The aforesaid payment shall apply except as otherwise provided in an agreement between the city and a property owner or developer, or as otherwise provided in a development order stipulated to by the property owner or developer.~~

(e) ~~—Moratorium for commercial and industrial uses.~~

(1)(A) ~~In order to establish an incentive for new development that will provide new jobs within the city, beginning on April 1, 2014 and ending July 31, 2016, the city council hereby establishes and imposes a two-year and four-month moratorium on the levy and assessment of transportation impact fees pursuant to this transportation impact fee code on any commercial and industrial use development project which would otherwise be subject to the collection of a transportation impact fee pursuant to section 10.03 of this code. To be subject to this moratorium and to be exempt from the levy and assessment of a transportation impact fee for a specific type of development on a particular parcel of real property, a property owner, contractor, developer, or applicant must during the effective period of the moratorium submit a complete building permit application for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section (e)(1)(B) and submit either: (i) a complete construction plan approval application; (ii) written verification from the city engineer that a construction plan for the development project is under review by the city engineer; or (iii) written verification from the city engineer that approval of the construction plan has occurred and is unexpired and active.~~

(B) ~~As used in subsection (e)(1)(A), the term "commercial or industrial use" includes but is not limited to retail commercial uses, professional office, restaurant, gasoline station, car wash, hotel, motel, medical/dental offices, banks, industrial, manufacturing, warehousing, but excludes residential, institutional and recreational uses. Commercial and industrial uses shall be determined pursuant to section 10.04~~

and 10.10(b)(2), appendix D, City Code of Ordinances, by the city engineer, after consultation with the community development director, by consideration of the actual use of the a proposed development project.

- (C) ~~If a building permit is issued during the moratorium and the permit remains active through extensions of active status granted after the expiration of the moratorium but legally issued by the building official (code compliance director), the moratorium shall continue to apply to the development permitted by the building permit. If a complete building permit application is submitted along with either a complete construction plan approval application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, during the moratorium, and the applications are actively maintained and pursued to approval in good faith, but a building permit is not issued to the property owner, contractor, developer, or other applicant until after the expiration of the moratorium, the moratorium shall be applicable to the development described in the complete building permit application and the complete construction plan application or approval.~~
- (D) ~~If a property owner, contractor, developer, or other applicant fails to submit a complete building permit application and either a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, all during the effective dates of the moratorium, for construction of an expanded, new, or redeveloped commercial or industrial use as classified pursuant to this section of the code, then the aforesaid property owner, contractor, developer, or other applicant's development project will not be subject to the moratorium on the payment of impact fees provided by this subsection (e), and all requirements of this article for payment of impact fees must be satisfied by said development project.~~
- (E) ~~This subsection is applicable to development projects for the time period of the moratorium which development projects are being developed pursuant to a development or developer's agreement between the city and a property owner or developer of the development project identified in the agreement; provided that in the case of a development or developer's agreement which contains specific provisions requiring the provision or installation of specified mobility improvements this subsection will not apply.~~
- (F) ~~No capacity reservation deposit for transportation concurrency required to be assessed pursuant to this chapter will be levied against any commercial or industrial development project, for which a complete building permit application and a complete construction plan application, verification that a construction plan for the development project is under review by the city engineer, or verification that approval of the construction plan has occurred and is unexpired and active, is submitted during the effective dates of the moratorium provided for by this subsection, or for which a building permit is issued for a commercial or industrial project. Notwithstanding the foregoing, a transportation concurrency evaluation and~~

~~a reservation of transportation concurrency will be required as otherwise provided for in this chapter.~~

~~(2) To be a complete building permit application, as set forth in this section, a property owner, contractor, developer, or applicant must submit:~~

~~(A) In writing to the building official (code compliance director) the following information: (i) name of project; (ii) site address; (iii) legal description of property; (iv) Brevard County Property Appraiser's ad valorem tax parcel identification number; (v) owner/project developer's complete mailing address, e-mail address, and telephone number; (vi) general contractor's firm name, if known, qualifier's name, license number, complete mailing address, e-mail address, telephone number, and fax number; (vii) fee simple title holder's name, complete mailing address, e-mail address, and telephone number; (viii) development project architect/engineer name, complete mailing address, e-mail address, and telephone phone number; (ix) identity of the permit type (i.e., commercial) and city site plan number; (x) description of work, value of construction and area of construction; (xi) sub-contractors may be listed as "to be determined" until time of building permit issuance to the general contractor; and (xii) notarized signature of the fee simple title holder/owner or legally authorized agent of the building permit application;~~

~~(B) To the building official (code compliance director) two complete sets of building plans for construction of the development project which building plans comply with section 107.1, 107.2 and 107.3.5, 2010 Florida Building Code-Building as adopted pursuant to section 13.80(a), appendix D, of the City Code;~~

~~(C) To the building official (code compliance director) the full building plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1.(2)e.1. Building Permits, and the life safety plan checking fee as set forth in City of Melbourne Resolution No. 1680, section 1.(2)e.2. Building Permits. Notwithstanding the schedule set forth in Resolution No. 1680, section 1.(2)e.1. and 2., the plan checking fees shall be paid for 100 percent of the full plan checking fee at the time of the submittal of the complete building permit application, and all such fees shall be non-refundable;~~

~~(3) To be a complete construction plan application, as set forth in this section, a property owner, contractor, developer, or applicant, must submit:~~

~~(A) In writing to the city engineer's office the following information:~~

~~(i) Complete application for construction site plan review including the information included in subsection (e)(2)(A) above and such other information as specified by the city engineer;~~

- ~~(ii) — Affidavit of ownership executed by fee simple property owner before a notary public authorizing the applicant to submit an application for construction plan review;~~
- ~~(iii) — Concurrency review application or current certificate of concurrency;~~
- ~~(iv) — Boundary and topographical survey, and tree survey, all prepared by and certified to by a Florida licensed and registered professional mapper and surveyor pursuant to F.S. ch. 472;~~
- ~~(v) — Drainage calculations certified to by a Florida licensed and registered professional engineer pursuant to F.S. ch. 471, as required by section 50-51, City Code of Ordinances;~~
- ~~(vi) — Estimated cost of project as certified to by a Florida professional engineer licensed and registered pursuant to F.S. ch. 471; and~~
- ~~(vii) — Estimated cost of dedicated utilities;~~
- ~~(B) — To the city engineer's office, the full construction plan review fee as set forth in City of Melbourne Resolution No. 2058, section 1. Development Fees. Notwithstanding the schedule set forth in Resolution No. 2058, section 1., the construction plan review fee shall be paid for 100 percent of the full construction plan review fee, and all such fees shall be non-refundable. As set forth in this paragraph (3) and paragraph (5), the term "construction plans" refers to those plans required to be prepared pursuant to this code as set forth in sub-paragraph (C) of the City Code below; and~~
- ~~(C) — To the city engineer 12 complete sets of construction plans for construction of the development site work certified to and sealed by a licensed and registered Florida engineer or architect. As utilized in this paragraph, the term "complete sets of construction plans for construction of the development" includes a site plan; water and sanitary sewer plan (including a composite map showing the location of all utilities including water, wastewater, telephone, gas, and electric); grading, paving and stormwater management drainage plan pursuant to chapter 50 and articles XV and XVI, chapter 9, appendix D, City of Melbourne Code of Ordinances; tree protection, landscape and irrigation plan pursuant to article XV, chapter 9, appendix D, City of Melbourne Code of Ordinances; erosion and sedimentation control plan pursuant to article XVI, chapter 9, appendix D, City of Melbourne Code of Ordinances; and signing and striping plan. As utilized in this paragraph, the term "construction plans" includes a site location map; legal description of the property; legend; scale; North arrow; name of development; site acreage and square footage; existing zoning and future land use designation; preparation and revision dates; name, address, phone number and e-mail address of the owner, owner's representative, engineer/architect, or other involved individuals; percentage and acreage of impervious area and building coverage; general statement of character and intent of use; building and use~~

~~square footages; building height; data information for future phases; number of units and intensity of use calculations; phases with phase lines and explanations; interior landscaping calculations; parking calculations; existing conditions including abutting streets (including name, right-of-way width from the centerline total width, driveways, medians and median cuts, sidewalk and bike paths, ditches/drainageways, adjacent zoning and land use, adjacent site improvements; access points within 100 feet, adjacent side layout within 100 feet of the project site, drainage conditions, elevations, fire hydrants within 500 feet, other existing conditions proposed to remain on-site including access points (location and width), structure (square footage, height, and use), parking areas, easements (location, dimension, purpose, and maintenance responsibility), electric light poles, and surface water); and proposed structures (including height, square footage, stories, use, location and dimensions), driveways, approaches, curb cuts, deceleration lanes, sidewalks/bike paths/parking spaces, loading area; dumpster enclosure and recycling pads, handicap access/parking/curbs/pavement details, proposed open space, native vegetative areas, traffic control devices, screening/buffering, recreational facilities (size, type, and location), drainage (all retention area locations to include proposed conveyance swales, slopes, sections, outfall structures, flow patterns, skimmers, and inlets), outside light locations, and water and sewer lines.~~

~~(4) The city's building official (code compliance director) is empowered to determine whether a building permit application is complete or incomplete pursuant to paragraph (2) above. The building official's (code compliance director's) determination may be appealed to the planning and zoning board pursuant to section 3.105, appendix D, within a reasonable time not to exceed 30 days following the date of rendition of the building official's (code compliance director's) determination that a building permit application is complete or incomplete. To initiate an appeal, a notice of appeal specifying the ground thereof must be timely filed as set forth above with the building official (code compliance director) and with the secretary to the planning and zoning board. The building official (code compliance director) shall within 15 days thereafter transmit to the planning and zoning board all papers constituting the record upon which the action appealed from was taken. The secretary to the planning and zoning board after receipt of the record shall within 60 days fix a time for hearing of the appeal thereafter and give the public notice thereof at least 15 days in advance of the public hearing as well as notice to the parties in interest, and the planning and zoning board will decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.~~

~~(5) The city engineer is empowered to determine whether an application for approval of construction plans has been submitted in a complete form pursuant to paragraph (3) above. The city engineer's determination may be appealed in the manner set forth in section 3.105, appendix D, to the planning and zoning board within a reasonable time not to exceed 30 days following the date of rendition of the city engineer's determination that a construction plan application is complete. Appeals~~

will be taken to the planning and zoning board, notwithstanding the wording set forth in section 3.105, appendix D, referencing appeals to the zoning board of adjustment.

- ~~(6) The moratorium on the requirement that transportation impact fees be paid for a development project arising from the submittal of a complete building permit application and a complete construction plan application, verification that a construction plan is under review, or verification that a construction plan approval is active and unexpired, all during the moratorium period, applies to the development project and parcel of land described in the complete building permit application and complete construction plan application or other verification and is not transferable to a different development project or to a substantially different parcel of land.~~

* * * *

Sec. 10.09. Impact fee agreements and security requirements.

- (a) Impact fee agreement.

* * * *

- (2) Any agreement proposed by an applicant pursuant to this subsection shall be presented to and approved by the city council prior to the issuance of a building permit certificate of completion or a certificate of occupancy. Any such agreement may provide for execution by mortgagees, lienholders, or contract purchasers in addition to the applicant and landowner, and ~~may~~ will permit any party to record said agreement in the public records of Brevard 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 the principles set forth in the judicial decisions set forth in section 10.07(b)(2).

* * * *

(b) Deferred contracts. In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to the imposition of the transportation applicable impact fee, the city shall, upon approval of an application from any eligible new homebuyer property owner, execute a contract to defer payment of a percentage of the transportation applicable impact fee according to the provisions described herein.

- (1) Moderate-income. For the purchase of a newly constructed principal residence, the sales price or value of which does not exceed the maximum eligible sales price, the city shall defer payment of 25 percent of the transportation applicable impact fee imposed by this code for any homebuyer property owner that qualifies as a moderate-income person or moderate-income household. The homebuyer property owner shall pay the remaining 75 percent of the transportation facilities applicable impact fee prior to the receipt of a building permit certificate of occupancy in accordance with the provisions of the contract for deferral and this ordinance. Payment of the deferred portion of the transportation impact fee shall be made in accordance with the provisions of the contract for deferral and paragraph (5) below.

- (2) Low-income. For the purchase of a newly constructed principal residence, the sales price or value of which does not exceed the maximum eligible sales price, the city shall defer payment of 50 percent of the ~~transportation~~ applicable impact fee imposed by this code for any ~~homebuyer property owner~~ that qualifies as a low-income person or low-income household. The ~~homebuyer property owner~~ shall pay the remaining 50 percent of the ~~transportation facilities~~ applicable impact fee prior to the receipt of a ~~building permit~~ certificate of occupancy in accordance with the provisions of the contract for deferral and this code. Payment of the deferred portion of the ~~transportation~~ impact fee shall be due in accordance with the provisions of the contract for deferral and paragraph (5) below.
- (3) Very low-income. For the purchase of a newly constructed principal residence, the sales price or value of which does not exceed the maximum eligible sales price, the city shall defer payment of 100 percent of the ~~transportation~~ applicable impact fee imposed by this code for any ~~homebuyer property owner~~ that qualifies as a very-low-income person or a very-low-income household. Payment of the deferred portion of the ~~transportation~~ impact fee shall be due in accordance with the provisions of the contract for deferral and paragraph (5) below.
- (4) A developer of an affordable housing project comprised of rental housing affordable to very-low, low and moderate income persons or households may apply for deferral of ~~transportation~~ the applicable impact fees. For every rental unit that is limited to occupancy by a moderate-income person or moderate-income household, the city shall defer 25 percent of the ~~transportation~~ applicable impact fee imposed by this code, with 75% due when the certificate of occupancy is issued. For every rental unit that is limited to occupancy by a low-income person or low-income household, the city shall defer 50 percent of the ~~transportation~~ applicable impact fee imposed by this code, with 50% due when the certificate of occupancy is issued. For every rental unit that is limited to occupancy by a very low-income person or very low-income household, the city shall defer 100 percent of the ~~transportation~~ applicable impact fee imposed by this code. Payment of the deferred portion of the ~~transportation~~ impact fee shall be due in accordance with the provisions of the contract for deferral and paragraph (5) below.
- (5) A new moderate-income, low-income, or very low-income homebuyer or a builder/developer of an affordable housing project that wishes to defer payment of a percentage of the ~~transportation~~ impact fees assessed on a residential property shall submit an application together with the necessary supporting documentation to the ~~housing and~~ community development department to initiate an eligibility review. If the ~~housing and~~ community development department determines based on the eligibility review that the application qualifies as an affordable housing project and the city engineer or designee approves the applicant is eligible for deferral of ~~transportation~~ the applicable impact fees, the ~~housing and~~ community development department will prepare a contract for deferral. The contract for deferral shall include provisions for the ~~new homebuyer~~ eligible owner of the property to execute a mortgage ~~or in favor of the city~~. The contract for deferral shall include provisions for a builder/developer of an affordable housing project to execute a land use and deed

restriction affordability agreement (LURA); consistent with the written policies and procedures established by city council. All property owners will be required to execute a mortgage and/or LURA, as the case may be. The contract for deferral shall set forth the terms for payment of the balance of the transportation applicable impact fee that remains unpaid and to notify the city of the date of the closing on the eligible property. The mortgage shall also indicate that the unpaid balance is due and payable upon no later than the subsequent sale of the property by the ~~homebuyer~~ property owner or in the event the property is used in violation of the LURA, as the case may be. The amount of the fees due will be based upon the established fee in effect at the time of certificate of occupancy. The contract for deferral, mortgage and LURA shall all be in a form acceptable to the city attorney.

~~The LURA with the builder/developer of an affordable housing project shall expressly state conditions when the unpaid balance is due. The mortgage or LURA shall be in legal and recordable form acceptable to the city attorney and shall authorize the city to record the mortgage or LURA in the official records of the county. Upon execution, the mortgage shall constitute a lien on the property for the balance of the transportation facilities impact fee that is due under the terms and conditions of this subsection. If a LURA is executed in lieu of a mortgage, then the LURA shall provide for the timetable of the balance due, plus payment of penalties and interest in the event of a breach of the terms of the LURA.~~

~~The record for monitoring the progress and ultimate compliance with the LURA will be kept by the housing and community development department. The mortgage shall provide a due-on sales clause similar to that found in standard FHA or FNMA form mortgages in use in Brevard County and require payment upon conveyance. The mortgage or LURA shall provide for collection of attorneys' fee in the enforcement of the mortgage or LURA, and require that property insurance be posted with the city designated as "loss payee" in at least the value of the physical improvements to the property.~~

* * * *

ARTICLE II. RECREATION IMPACT FEES

Sec. 10.20. Fee required.

The payment of a fee to the city to be used for the acquisition expansion, construction and provision of city recreational facilities shall be required in the following circumstances:

* * * *

- (3) In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to the imposition of the recreation impact fee, the city shall, upon approval of an application from any eligible property owner, execute a contract to defer payment of the recreation impact fee pursuant to appendix D, chapter 10, section 10.09(b) of this city code.

* * * *

ARTICLE III. PUBLIC FACILITIES IMPACT FEES

* * * *

Sec. 10.43. Time of payment.

(a) The fee required by this article shall be paid at the time the certificate of occupancy is issued.

(b) In order to partially or completely mitigate for potentially adverse effects on the production of affordable housing that may be due to the imposition of the public facilities impact fee, the city shall, upon approval of an application from any eligible property owner, execute a contract to defer payment of the recreation impact fee pursuant to appendix D, chapter 10(b), section 10.09 of this city code.

* * * *

SECTION 5. Severability/Interpretation Clause.

(a) That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional, illegal or otherwise void by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, illegality, or other declaration shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

(b) That in interpreting this ordinance, underlined words indicate additions to existing text and ~~stricken words~~ indicate deletions from existing text. Asterisks (* * * *) indicate an omission from the ordinance of text, which exists in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this ordinance shall remain unchanged from the language existing prior to adoption of this ordinance.

SECTION 6. Effective Date. That this ordinance shall become effective immediately upon its adoption in accordance with the Charter of the City of Melbourne.

SECTION 7. Adoption Schedule. That this ordinance was passed on the first reading at a regular meeting of the City Council on the ____ day of _____, 2019, and adopted on the

second/final reading at a regular meeting of the City Council on the ___ day of _____, 2019.

BY: _____
Kathleen H. Meehan, Mayor

ATTEST:

Cathleen A. Wysor, City Clerk

Ordinance No. 2019-18