



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, County Attorney

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 ■ Fax 407-836-5888
http://www.ocfl.net

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
JUN 02 2015 CS/BS

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County
Attorneys
Lila McHenry

Assistant County
Attorneys
Andrea Adibe
Roberta Alfonso
Michael Bray
Edward M. Chew
Anthony Cotter
Whitney E. Evers
Wanzo Galloway, Jr.
Georgiana Holmes
Katherine W. Latorre
Peter A. Lichtman
Scott McHenry
Sawsan Mohiuddin
Scott Shevenell
William Turner

Legal Administrative
Supervisor
Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Cathy Saravanja, CP
Maria Vargas, ACP

MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Roberta Alfonso, Assistant County Attorney *RA*
Contact: (407) 836-7320

DATE: May 18, 2015

RE: **Consent Agenda Item for the Board Meeting on June 2, 2015**
Proposed revisions, Administrative Regulation 4.02 titled "Alternative Impact Fees"

Attached for your review is a proposed revised Administrative Regulation.

I. EXPLANATION & SUMMARY OF PROPOSED REGULATION:

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

It is our intent to place the proposal on the June 2, 2015, Consent Agenda for approval by the Board of County Commissioners. Please advise of any questions, comments, or modifications you may wish to make prior to that meeting.

II. ACTION REQUESTED:

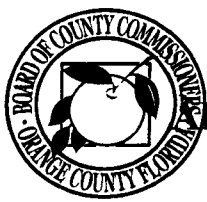
Approval of proposed revisions to Administrative Regulation 4.02, titled
"Alternative Impact Fees"

AMC
Attachment

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

PROPOSED REVISIONS TO ADMIN REG.

04/24/15

 <p style="margin: 0;">ORANGE COUNTY ADMINISTRATIVE REGULATIONS</p>	No.: 4.02
	Date: 06/27/06
	Approved By: BCC Revised: 02/23/10
Title: ALTERNATIVE ROAD IMPACT FEES	Page 1 of 5

I. POLICY:

Section 23-93 of the Orange County Code ~~provides states~~ in pertinent part that ~~if where~~ “an applicant believes that the cost of off-site ~~roadway~~ improvements needed to serve his proposed development is less than the fee established in Section 23-92, the applicant may, at his//her own expense, submit an alternative fee calculation to the County Administrator or designee ~~pursuant to the provisions of this section.~~ Such an The alternative fee calculation must shall be submitted prior to issuance of any building permit and must be approved by the BCC prior to issuance of any certificate of occupancy, temporary or permanent, as follows: (1) Prior to the issuance of the initial certificate of occupancy for a non-phased project; or (2) Prior to the issuance of the initial certificate of occupancy for a phase within a phased project. If the County Administrator or designee finds that the data, information, and assumptions used by the applicant to calculate the alternative impact fee satisfy the requirements of this section, the alternative impact fee shall be deemed the impact fee due and owing for the proposed development.” For the purposes of administering ~~the above quoted~~ such portion of the Orange County Code, the Board of County Commissioners (“BCC”) hereby defines (i) the term “submitted” (prior to issuance of any building permit) as formal approval by the Impact Fee Committee, as defined in Administrative Regulation 4.01, of a proposed methodology, impact fee calculation, and Impact Fee Agreement and (ii) the term “~~initial~~ any certificate of occupancy, temporary or permanent” as ~~that~~ any certificate of occupancy issued for the project for which the alternative study is submitted. In all other respects, tThe County Administrator has directed the Orange County Traffic Engineering Division to act as ~~their~~ designee in this matter.

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

1. The independent source is a ~~C~~county-accepted source of transportation engineering or planning data or information; or
2. The independent source is a local study carried out pursuant to an accepted



ORANGE COUNTY ADMINISTRATIVE REGULATIONS

No.: 4.02

Page 2 of 5

methodology, ~~and~~ which studies the four (4) variables of ADT, %NT, ATL, and LADF of transportation planning or engineering.”

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

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

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

II. PROCEDURES

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

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

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

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



ORANGE COUNTY ADMINISTRATIVE REGULATIONS

No.: 4.02

Page 3 of 5

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

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

5. The methodology for achieving an adequate level of statistical significance is ~~also~~ required. For the purposes of conducting an alternative ~~road~~ impact fee study, a statistical confidence level of 95% and a confidence interval of +/- ~~5~~10% ~~are~~ required except that, upon proof of sufficient justification, the IFC may approve a confidence interval of other than +/- 10%. The applicant should estimate the number of interviews needed to achieve this level prior to the study, and provide verification that the level was met after the study. A minimum of five (5) consecutive days of (i) interviews from 2 P.M. to 6 P.M. ~~is required~~, and ~~five (5) days of~~ (ii) twenty-four (24) hour machine and/or manual counts ~~is~~ required. Depending on the land use, the County may require that the five (5) days of interviews be conducted during a time period other than from 2 P.M. to 6 P.M. (for example, the County may require that interviews for a restaurant be conducted from 4 P.M. to 8 P.M.). ~~Also, one (1) person in~~ The driver of at least 25% of ~~all~~ the vehicles entering the site must be interviewed; the interview percentage (25% or more) must be validated by machine and/or manual counts and must provide precise, reliable data, as determined by the Traffic Engineering Division. Although ~~the applicants~~, at their discretion, may count/interview for longer periods of time, the interviews/counts must be on approved consecutive ~~week~~days. Also, if the applicant opts to conduct further interviews, the interviewing must contain equal periods of peak and off-peak traffic activity. County staff may visit the study site at random intervals to assure compliance with the approved methodology.

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

C. Requests Ffor transfers of alternative road-impact fee studies to other sites, please refer toshall comply with Sections 23-92 and 23-93(d) of the Orange County Code, in addition to the provisions of this Administrative Regulation.

D. The proposed methodology shall be delivered to the ~~Orange County~~-Traffic



ORANGE COUNTY ADMINISTRATIVE REGULATIONS

No.: 4.02

Page 4 of 5

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

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

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

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

III. APPEAL.

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



ORANGE COUNTY ADMINISTRATIVE REGULATIONS

No.: 4.02

Page 5 of 5

Regulation 4.01.

IV. APPROVAL.

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

B. If the alternative ~~road~~ impact fee request is granted, a follow-up review to confirm the approved assumptions in the study shall be conducted in accordance with Chapter 23, Orange County Code ~~within five (5) years of acceptance of the study by the County~~. ~~Road~~-Impact fees not previously accounted for in the study shall be paid, at the ~~road impact fee~~ rate in effect at the time of issuance of the building permit, within thirty (30) days of a demand letter issued by Orange County.

FOR MORE INFORMATION CONTACT:

~~County Administrator's Office;~~ Public Works, Traffic Engineering Division; Growth Management Community, Environmental, and Development Services Department, Fiscal and Operational Support Division.

REFERENCE: Chapter 23, ~~Article IV~~, Orange County Code, Orange County Fee Directory Section 3-42

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

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

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

4.02 ALTERNATIVE IMPACT FEES

I. POLICY

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

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

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

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

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

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

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

For purposes of this section, a local study is one which is conducted within Orange County. If an applicant demonstrates, to the satisfaction of the Traffic Engineering Division, that no appropriate study site exists in Orange County, then a study site outside of

Orange County may be approved by the Impact Fee Committee (defined below.)

II. PROCEDURES

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

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

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

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

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

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

5. The methodology for achieving an adequate level of statistical significance is required. For purposes of conducting an alternative impact fee study, a statistical confidence level of 95%

and a confidence interval of +/- 10% are required except that, upon proof of sufficient justification, the IFC may approve a confidence interval of other than +/- 10%. The applicant should estimate the number of interviews needed to achieve this level prior to the study, and provide verification that the level was met after the study. A minimum of five (5) consecutive days of (i) interviews from 2 P.M. to 6 P.M. and (ii) twenty-four (24) hour machine and/or manual counts is required. Depending on the land use, the County may require that the five (5) days of interviews be conducted during a time period other than from 2 P.M. to 6 P.M. (for example, the County may require that interviews for a restaurant be conducted from 4 P.M. to 8 P.M.). The driver of at least 25% of all vehicles entering the site must be interviewed; the interview percentage (25% or more) must be validated by machine and/or manual counts and must provide precise, reliable data, as determined by the Traffic Engineering Division. Although applicants, at their discretion, may count/interview for longer periods of time, the interviews/counts must be on approved consecutive days. Also, if the applicant opts to conduct further interviews, the interviewing must contain equal periods of peak and off-peak traffic activity. County staff may visit the study site at random intervals to assure compliance with the approved methodology.

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

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

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

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

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

G. The Traffic Engineering Division shall review the finalized study to determine whether it contains sufficient information for the IFC to consider a recommendation of an alternative impact fee. Only after such sufficiency is established, an applicant wishing to pay said alternative fee shall appear before the IFC and shall enter into a developer's agreement with Orange County to implement the alternative impact fee calculation validated by the study. The developer's agreement will be reviewed by the County Attorney's Office and must be approved by the BCC before the applicant is entitled to the impact fee rate(s) determined by the alternative study. Upon the final execution of the developer's agreement and upon approval by the BCC, the Traffic Engineering Division, on behalf of the IFC, will provide the applicant with an original of the approved, recorded agreement. An

applicant is not entitled to pay impact fees at the rate(s) determined by the alternative study until the applicant receives the approved, recorded agreement. A copy of the IFC's response will also be forwarded to the Community, Environmental, and Development Services Department's Fiscal and Operational Support Division.

III. APPEAL

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

IV. APPROVAL

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

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

FOR MORE INFORMATION CONTACT: Public Works, Traffic Engineering Division; Community, Environmental, and Development Services Department, Fiscal and Operational Support Division.

REFERENCE: Chapter 23, Orange County Code; Orange County Fee Directory Section 3

APPROVED: 6/2/06

REVISED: 6/2/15