

ARTICLE V. SCHOOL IMPACT FEE¹

Sec. 70-170. Title, authority and applicability.

- (a) This article of chapter 70 shall be known and may be cited as the "Volusia County Educational Facilities Impact Fee Ordinance."
 - (b) The county council of Volusia County has the authority to adopt this article pursuant to article VIII, section 1(g), Florida Constitution (1968 revision); F.S. chs. 125, 163, and 1013; chapter 70-966 (Volusia County Home Rule Charter), Laws of Florida (Sp. Acts), as amended; and Volusia Ordinance 90-10, adopted on March 15, 1990 (Volusia County Comprehensive Plan), as amended.
 - (c) This article shall apply uniformly throughout Volusia County, in the unincorporated areas and in all incorporated areas thereof.
- (Ord. No. 97-7, § II, 5-15-97; Ord. No. 2005-01, § I, 2-24-05)

Charter reference(s)—Conflicts between county and municipal ordinances, § 1305.

Sec. 70-171. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster's New Collegiate Dictionary (G & C Merriam Co., 11th Edition July 2003, or any subsequent edition) shall be used for the definition of any words not defined in this section.

Ancillary facilities means the buildings, sites, and site improvements necessary to provide support services to educational programs (e.g., facilities as vehicle maintenance, warehouses, maintenance or administrative buildings not located at school plants).

Applicant means any person applying for or who has been granted a permit to proceed with a project.

Auxiliary facilities means those portions of a school plant which are not designated for student stations.

Building permit means the permit required by the Florida Building Code in effect at the time of the application for the building permit to construct the specific type of dwelling for which the application was made.

Certificate of occupancy means the official document or permit issued by a municipality in Volusia County or by the county, evidencing the completion of construction of a building in accordance with all applicable codes and its legal entitlement to permanent occupancy and use. The term certificate of occupancy shall also include an approved final inspection for a mobile home.

Comprehensive plan means the same as the definition of the phrase "comprehensive plan" prescribed in the VCLDC.

¹Editor's note(s)—Section I of Ord. No. 97-7, repealed §§ 70-151—70-169 in their entirety. Formerly, §§ 70-151—70-169 pertained to school impact fees and derived from art. IV, §§ 1.1—1.5, 2.1—2.3, 3.1, 3.3, and 3.4—3.11 of Ord. No. 92-9, adopted July 2, 1992. Section II of Ord. No. 97-7 added new provisions as herein set out.

County means the County of Volusia, a body corporate and politic.

County council means the county council of Volusia County, Florida.

County manager means the county manager of the county or his or her designee.

District means the School District of Volusia County.

District school system means the educational facilities, auxiliary facilities, and ancillary facilities of the district, which are used to provide instruction in the public schools and the administrative or support activities relating to such instruction.

Dwelling means one or more rooms in a building forming a separate and independent housekeeping establishment, arranged, designed or intended to be used or occupied by one family, and having no enclosed space or cooking or sanitary facilities in common with any other dwelling with no ingress or egress through any other dwelling, and containing permanent provisions for sleeping facilities, sanitary facilities and not more than one kitchen facility, and includes multifamily dwellings, manufactured homes and mobile homes and any dwelling in a multifamily dwelling and/or in a building containing multiple uses.

Educational facilities means the building, furniture and capital equipment that are constructed, installed, or established for student stations, auxiliary facilities, and ancillary facilities.

Feepayer means that person who pays an impact fee for educational facilities or such person's successor in interest with the right or entitlement to any refund of previously paid development impact fees which is required by this article and which has been expressly transferred or assigned to the successor in interest.

Impact fee means the fee imposed for educational facilities under section 70-176.

Land development activity means any change in land use or any construction or installation of a dwelling, or any change in the use of any structure that will or could result in additional students in the public schools of the district.

Other development exactions means the dedication of the sites for or actual improvements constituting educational facilities, as mandated or required by the county or by a municipality located in Volusia County in connection with the issuance of a development permit.

Owner means any person, group of persons, firm or firms, joint venture, corporation or corporations, or any other legal entity having legal title to the land sought to be developed in Volusia County including both incorporated and unincorporated areas.

Person means an individual, firm, association, organization, whether social, fraternal or business, partnership, joint venture, trust company, corporation, receiver, syndicate, business trust or other entity or group or combination acting as a unit, including any government.

Public schools means all educational facilities for kindergarten classes; elementary and secondary school classes and special classes; adult, part-time, vocational and evening schools, courses, or classes authorized by law to be operated under the control of the school board.

School board means the governing board of the district.

School plant means the land, building, furniture, equipment and site improvements which are necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services for each student; the term includes educational facilities, ancillary facilities, and auxiliary facilities.

(Ord. No. 97-7, § II, 5-15-97; Ord. No. 2005-01, § II, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 70-172. Rules of construction.

- (a) This article shall be liberally construed to effectively carry out its purpose in the interest of promoting and protecting the public health, safety and welfare.
 - (b) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article, unless otherwise stated in this article:
 - (1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
 - (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 - (3) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."
 - (5) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected shall apply.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
 - (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
 - (c) Nothing in this article shall be construed or interpreted to include the county in the definition of "agency" in F.S. § 120.52, or to otherwise subject the county to the application of the Florida Administrative Procedure Act, F.S. ch. 120.
- (Ord. No. 97-7, § IV, 5-15-97)

Sec. 70-173. Legislative findings.

The county council of Volusia County makes the following findings of legislative fact:

- (1) Article IX, Section 1, of the Florida Constitution requires that adequate provision be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allow students to obtain a high quality education. It also provides that adequate provision be made for specific class size requirements.
- (2) Volusia County is constituted as a separate school district, and the school board is empowered by law to operate, control, and supervise all free public schools in the district.
- (3) The school board is required under F.S. ch. 1013, to coordinate school site planning and selection with the county's comprehensive plan.
- (4) F.S. § 1013.33, requires the coordination of planning between school board and the county council to ensure that plans for public educational facilities are facilitated and coordinated in time and place with plans for residential development concurrently with other necessary public services.

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- (5) In order to maintain current levels of service the district school system must expand the capacity of the system if new development in the district is to be accommodated. This expansion of capacity must be done in order to promote and protect the public health, safety and welfare of the residents of Volusia County.
 - (6) Under F.S. §§ 380.012 and 163.3202, counties are encouraged to adopt innovative land development regulations which include, among other provisions, impact fees such as the impact fee imposed under this article.
 - (7) The imposition of an impact fee is one of the preferred methods of ensuring that new development bears a proportionate share of the capital costs of educational facilities which are necessary to accommodate new development. This must be done in order to promote and protect the public health, safety and welfare.

(Ord. No. 97-7, § V, 5-15-97; Ord. No. 2005-01, § III, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Sec. 70-174. Intent and purposes.

- (a) This article is consistent with, and intended to assist in the implementation of, the Volusia County Comprehensive Plan.
- (b) The purpose of this article is to regulate land development so as to assure that new development bears a proportionate share of the cost of accommodating new development with educational facilities.

(Ord. No. 97-7, § VI, 5-15-97; Ord. No. 2005-01, § IV, 2-24-05)

Sec. 70-175. Methodology for calculating the impact fee.

- (a) The school board by rule may establish a fee determination methodology and the fee or a fee schedule. The rule shall provide an effective date for any fee at least 90 days after adoption. A fee shall be based on the most recent and localized data and consistent with the level of service provided in the county comprehensive plan. The school board shall find that the fee payer does not bear more than a lawful share of the capital cost for which the fee is collected.
- (b) No adjustment shall be made for 2008 or subsequent years. The county shall refund amounts paid which exceed the 2007 fee amount by reason of the automatic adjustment for 2008 formerly provided in effect.

(Ord. No. 97-7, § VII, 5-15-97; Ord. No. 2005-01, § V, 2-24-2005; Ord. No. 2008-04, § I, 2-21-08; Ord. No. 2008-10, § 1, 4-10-08)

Sec. 70-176. Imposition of impact fee; administrative charge.

- (a) Any person who makes or causes the making of a dwelling, or any person who changes the use of any building to create a dwelling shall be required to pay an impact fee for educational facilities in the manner and amount set forth in this article. The liability for the impact fee shall accrue upon issuance of a building permit for the land development activity or upon occupancy of the dwelling if issuance of a building permit is not required or obtained. The fee shall be payable not later than the issuance of a certificate of occupancy for the land development activity or occupancy of the dwelling, whichever occurs first.
- (b) No certificate of occupancy for any land development activity requiring payment of an impact fee shall be issued until the impact fee has been finally determined and paid. No person shall change the use or allow a change in use of any building where the impact fee imposed by this article is applicable without having paid the proper impact fee imposed by this article.

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- (c) In addition to the fee established pursuant to section 70-175, there is imposed an administrative charge of three percent of the impact fee, to be retained by the county or remitted to municipalities as provided by interlocal agreement.

(Ord. No. 97-7, § IX, 5-15-97; Ord. No. 2005-01, § VII, 2-24-05; Ord. No. 2008-04, § I, 2-21-08; Ord. No. 2008-14, § I, 6-5-08)

Editor's note(s)—Ord. No. 2008-04 deleted former § 70-176, entitled "Amount of impact fee", which derived from: Ord. No. 97-7, § VIII, adopted May 15, 97; and Ord. No. 2005-01, § VI, adopted Feb. 24, 2005. Ord. No. 2008-04 further amended the Code by renumbering the remaining §§ of article V, as set out herein.

Sec. 70-177. Method of payment of impact fee.

- (a) The person applying for the issuance of a building permit shall pay the impact fee prior to the issuance of a certificate of occupancy, or the occupancy of the building. The county and any municipality with an interlocal agreement with the county shall issue an impact fee statement to the applicant for a building permit. Such impact fee statement shall set forth the amount of impact fee due.

The obligation for payment of the impact fee shall run with the land. However, this section shall not be construed to relieve an applicant of responsibility or liability for payment of the impact fees imposed by this article.

The obligation of a person to pay the impact fee imposed by this article shall not be extinguished by the inadvertent failure of the county to collect the impact fee at the time required.

In the event the impact fee is not paid prior to the issuance of a certificate of occupancy or the occupancy of the building for the affected impact construction, the county may collect the impact fee, together with interest from the date payment was due at the rate fixed by law for judgments, a penalty of five percent per month (not to exceed 25 percent), the costs of such collection and a reasonable attorney's fee. Interest and penalties shall be remitted for addition to the trust fund, and the recovered costs and fees for collection shall be retained by or remitted to the government incurring the expense of collection. The county attorney, or a duly authorized representative of the county attorney may execute, serve upon the owner by certified mail and record a notice of nonpayment in the official records of the county, which shall contain the legal description of the property and the amount of the impact fee liability. Said notice shall thereupon operate as a lien against such property for the amount of the impact fee, together with interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

In the event the impact fee rate for a particular land use is changed subsequent to the issuance of a building permit and before the issuance of a certificate of occupancy, the impact fee shall be the amount in effect on the date payment is received.

All impact fees due under this article shall become a lien at the time of the issuance of the building permit or, in the case of a change of use, upon the occurrence of the change of use or issuance of a certificate of occupancy for the changed use, whichever comes first, as the case may be. Such impact fees shall be due, and shall remain a lien, coequal with the lien of all state, district, county and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Such liens shall be upon the land on which an improvement is made requiring the payment of impact fees and shall be for the amount of the impact fee required, as well as for all penalties and interest due under the provisions of this article.

- (b) Payment of impact fees shall be made to the County of Volusia and any municipality with an interlocal agreement to collect impact fees for the county.
- (c) The payment of the impact fee shall be in addition to any other fees, charges, or assessments due for the issuance of a building permit. As a collection allowance for reimbursement for the cost of administering and

handling of such impact fees, the collecting county shall be permitted to impose on and retain from each feepayer an administrative fee of three percent over and above the amount to be remitted to the school board under this section.

- (d) A municipality may, through interlocal agreement with the county, arrange for required impact fees to be paid directly to the municipality in accordance with the interlocal agreement. The failure of a municipality having entered into such an interlocal agreement to collect the required impact fee shall in no event relieve any person from the obligation to pay the impact fee imposed by this article.
- (e) Impact fees collected by a municipality under this article shall be handled in accordance with the interlocal agreement between such municipality and the county in effect at the time of such impact fee collection.
- (f) Impact fees collected by the county under this article (together with interest earned and credited thereon) and impact fees received by the county from any municipality shall be segregated and held separately from all other revenues in a separate account. The fees collected shall be transferred to the school board on a monthly basis, by the 15th day of each month, for those impact fees collected in the previous calendar month.
- (g) All impact fees collected or received by the county under this article shall be properly identified and promptly deposited in the Volusia Educational Facilities Impact Fee Trust Account. Funds shall be held in a separate account, as prescribed in section 70-178, and shall be used solely for the purposes specified in section 70-178.

(Ord. No. 97-7, § X, 5-15-97; Ord. No. 2000-26, § I, 8-17-00; Ord. No. 2003-04, § 2, 2-20-03; Ord. No. 2005-01, § VIII, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Sec. 70-178. Impact fee trust account; use of entrusted funds.

- (a) There is hereby established a separate account to be known as the Volusia Educational Facilities Impact Fee Trust Account.
- (b) All funds withdrawn from this account must be used and expended in strict accordance with this section.
- (c) The funds transferred to the school board under subsection 70-177(f), shall be deposited in a separate trust or account established by the school board, i.e., the district impact fee account. The funds deposited in the district impact fee account shall be held and maintained separate from all other accounts of the district. The funds in the account must be used solely for the purpose of paying the capital costs of educational facilities needed to increase the capacity of the district school system in order to accommodate the increased demand on that system which is reasonably attributable to the construction of each new dwelling in the district.
- (d) Funds deposited in the district impact fee account may be used for repayment of moneys borrowed from any budgetary fund of the county or the school board which is used to fund improvements and additions to the district school system otherwise eligible for funding directly under subsection (c), above.
- (e) Funds deposited in the district impact fee account may be used for payment of principal and interest, necessary reserves and costs of issuance under any bonds, certificates of participation in lease-purchase programs, or other indebtedness issued by or on account of the county or school board, heretofore or hereafter, to fund improvements and additions to the district school system otherwise eligible for funding directly under subsection (c) above.
- (f) Without limiting the restrictions pertaining to the use and expenditure of funds, and as an example, funds on deposit in the district impact fee account shall not be used by the district for operational expenses, routine maintenance or repairs.

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- (g) Funds on deposit in the district impact fee account which are not immediately necessary for expenditure shall be invested by the school board. All income derived from the investment of such funds shall be deposited in the district impact fee account and held and expended subject to the restrictions imposed in subsection (c) above.
 - (h) Concurrent with the receipt of its annual audit, the school board shall provide to the county and to all the municipalities in Volusia County, a report containing a summary of the impact fees collected during the previous year and a detailed description of the uses and expenditures for which the net impact fee revenue was expended during the preceding year.
 - (i) Funds may be used to provide refunds as described in section 70-179.
- (Ord. No. 97-7, § XI, 5-15-97; Ord. No. 2005-01, § IX, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Sec. 70-179. Refund of impact fee paid.

- (a) If a building permit expires without commencement of construction, then the feepayer or his or her successor or assign may apply to the school district for a refund, without interest, of any impact fee paid in connection with its issuance. If the feepayer demonstrates that all rights to commence the construction have irrevocably expired, the county shall refund the fee (or unencumbered portion thereof), after first deducting an administrative fee of three percent of the first \$5,000.00 refunded, and one percent of any remainder.
- (b) Any funds held in the district impact fee account which are not expended or encumbered by the end of the fiscal quarter immediately following the sixth year following the date the impact fee was collected shall, upon application of the feepayer for which an impact fee was paid, be returned to the feepayer with interest at the rate of average net interest rate earned by the funds deposited in the Volusia Educational Facilities Impact Fee Trust Account from the date on which the impact fee was actually collected until the date of the referral, if the fee payer submits a timely written application for a refund to the county within 180 days after the expiration of the six-year period. In determining whether the fee paid by the feepayer has been expended or encumbered, funds in the district impact fee account shall be considered to be expended or encumbered on a first in, first out basis.
- (c) In the absence of an express transfer or assignment or entitlement to any refund or previously paid impact fees, the right or entitlement shall be deemed "not to run with the land."

(Ord. No. 97-7, § XII, 5-15-97; Ord. No. 2005-01, § X, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Sec. 70-180. Exemptions and allowable credits.

- (a) The following development activities are exempt from payment of the impact fee:
 - (1) Alterations or expansion of an existing building where no additional dwellings are created, where the use of such building is not changed, and where no additional public school enrollment will be generated over and above the number produced by the existing use.
 - (2) The construction of accessory buildings or structures which will not produce additional public school enrollment over and above that generated by the principal building or use of the land.
 - (3) The replacement of a legally permitted dwelling in use on or after May 1, 1986, provided that no additional public school enrollment will be generated over and above that produced by the original use of the land.
 - (4) Beginning on or after May 18, 2000, any dwelling that is located in any development designated and operated as a Community for Older Persons, in compliance with the terms and provisions of the

Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, 42 U.S.C. §§ 3601-3619, and that prohibit any person under the age of 18 years from residing within any dwelling on the property as a permanent resident, as evidenced by a recorded declaration of covenants and restrictions not subject to revocation or amendment for a period of at least 30 years from the date of recording. Said covenants and restrictions shall run with the land. In the event the covenants and restrictions are breached, or are amended or otherwise modified, so that any person under the age of 18 is allowed to reside as a permanent resident in any dwelling receiving a housing for older persons exemption, the district may give notice of the breach, amendment or modification, to the owners of the dwellings located in that community for older persons, and give them the opportunity to cure the breach or restore the age restriction requirement to the covenants and restrictions, as applicable, within 60 days of the notice being mailed (the "cure"). If the cure is not implemented within the said 60-day period, then the impact fee shall be due for all dwellings within that community for older persons. In that event, the owners of all dwellings within the community for older persons shall be provided notice of the amount of impact fee due, and shall be given six months to pay the impact fee in the amount as is in effect at the time of the notice being given of the amount due and a notice of the amount due shall be filed in the public records of the county. If the "cure" is not implemented the district may request that the county send such notice. If the district requests the county to send the notice, such request shall be in writing with documentation of the breach and failure to cure together with the name and address of any person to whom the notice shall be sent. Notices under this article shall be sent by certified mail, return receipt requested, to the last known address of the owner of each affected dwelling, by reference to the latest ad valorem tax records. Failure to pay impact fee when due shall result in the same penalties and follow the same procedures as set forth in section 70-177.

Any claim of exemption must be made prior to or simultaneously with an application for a building permit or permit for a dwelling.

(b) Credits against the impact fee.

- (1) The value of all land dedications for educational purposes and all educational facilities improvements made, when required by or under color of law (including those required pursuant to F.S. § 380.06(16), with respect to a development of regional impact) shall be credited against the impact fee due for the development. The credits shall be determined in the manner prescribed in subsection (b)(3), below.
- (2) Any person may seek to obtain a credit against the impact fee by dedicating needed school sites or constructing educational facilities or other capital improvements, which are needed by the district and approved by the school board. The offer to make such a dedication must specifically request impact fee credits. Construction of all improvements must be in accordance with design standards and specifications prescribed by the applicable state law, administrative rule, or by policy of the school board. If the school board accepts the offer to dedicate, the value of the credits shall be determined as set forth in subsection (b)(3), below.
- (3) The following rules shall apply to the determination of the value of credits which are available to the owner under subsections (b)(1) and (b)(2), above:
 - a. Credit for the dedication of land or interest therein shall be valued at:
 1. One hundred fifteen percent of the current assessed value for real property taxes of the land, as assessed by the county property appraiser; or
 2. By such other appropriate method as the school board may have accepted for particular land dedications or facility improvements made prior to the effective date of this article; or
 3. At the option of the owner, by fair market value established by at least two certified state appraisers acceptable to the school board.

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- b. Credit for the dedication of land shall be provided when the land or interest therein has been conveyed to, and accepted by, the school board under the then current policy for the acceptance of dedicated or conveyed lands for this purpose.
 - c. Credit for construction of educational facilities shall be provided only after the owner has submitted acceptable engineering drawings and specifications and construction cost estimates to the school board. The school board shall determine the amount of any credit for educational facility improvements, based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the school board determines that such estimates submitted by the owner are either unreliable or inaccurate. The school board shall provide the owner and the county manager with a letter certifying the amount of the credit to be granted, the reason for the credit, and the legal description or other adequate description of the development to which the credit may be applied. The owner must sign and date a duplicate copy of such letter indicating his or her agreement to the terms of the letter. No credit shall be awarded unless the letter signed by the owner is returned to the school board and the county manager. The failure of the owner to sign, date, and return the letter within 60 days may be grounds for the nullification of the credit.
 - d. Except as provided in subparagraph b., credit against impact fees otherwise due will not be provided until:
 - 1. The construction is completed and accepted by the school board or by the appropriate state agency, whichever is applicable;
 - 2. A suitable maintenance and warranty bond is received and approved by the school board, when applicable; and
 - 3. All design, construction, inspection, testing, bonding and acceptance procedures are in strict compliance with the then current requirements of the school board or the Florida Department of Education, when applicable, before completion of a specified educational facility if adequate assurances are given by the owner that the standards set out in subsection c. will be met and if the owner posts adequate security as provided below, for the costs for such construction. Security in the form of a payment and performance bond, an irrevocable letter of credit, an escrow agreement, or any other functionally equivalent security shall be posted with and approved by the school board. The amount of the adequate security shall be determined by the school board. If the building or improvement will not be constructed within one year of the acceptance of the offer by the school board, the amount of the adequate security may be increased in an amount as determined by the school board consistent with school board policy.

- (4) Credits may be transferable from one land development activity to another with the prior approval of the county.

(Ord. No. 97-7, § XIII, 5-15-97; Ord. No. 2000-26, § II, 8-17-00; Ord. No. 2005-01, § XI, 2-24-05; Ord. No. 2008-04, § I, 2-21-08)

Sec. 70-181. Administrative review.

Administrative review shall be as provided in article III, sections 70-81 and 70-82. The school board by rule may establish an alternative procedure for review which shall control to the extent provided therein.

(Ord. No. 97-7, § XIV, 5-15-97; Ord. No. 2000-26, § III, 8-17-00; Ord. No. 2008-04, § I, 2-21-08)

Editor's note(s)—Ord. No. 2008-04, adopted Feb. 21, 2008 deleted former § 70-184 entitled "Article review requirements", which derived from: Ord. No. 97-7, § XVI, adopted May 15, 1997; and Ord. No. 2005-01, § XII, adopted Feb. 24, 2005.

Secs. 70-182—70-210. Reserved.