

BCC Mtg. Date: July 28, 2020

EFFECTIVE DATE: August 6, 2020

ORDINANCE NO. 2020 - 16

AN ORDINANCE AMENDING CHAPTER 23 (“IMPACT FEES”) BY AMENDING SECTION 23-29 (“IMPACT FEES, WITH ANNUAL INDEXING; COMPARABLE USES; ALTERNATIVE IMPACT FEE CALCULATION; PERIODIC UPDATES; TIME OF PAYMENT”); SECTION 23-60 (“FEES; COMPARABLE USES, ADJUSTMENTS; PERIODIC ADJUSTMENTS; TIME OF PAYMENT”); SECTION 23-91 (“LIMITATION OF ISSUANCE OF BUILDING PERMITS”); SECTION 23-98 (“EXEMPTIONS AND DISCOUNTS”); SECTION 23-142 (“PAYMENT”); SECTION 23-180 (“IMPACT FEES; COMPARABLE USES; ADJUSTMENTS; PERIODIC ADJUSTMENTS; TIME OF PAYMENT”); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission;

WHEREAS, on March 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency;

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19;

WHEREAS, on March 13, 2020, Orange County Mayor Jerry L. Demings issued emergency Executive Order 2020-01, finding that a State of Local Emergency exists in both incorporated and unincorporated Orange County, Florida;

WHEREAS, the Board of County Commissioners (“BCC”) recognizes that in addition to the public health impacts, Orange County has suffered negative economic impacts from COVID-19;

WHEREAS, the BCC hereby finds it is in the best interest of the citizens of Orange County to try to help prevent further damage to the local economy.

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**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF ORANGE COUNTY:**

Section 1. Amendments; In General. Chapter 23 of the Orange County Code is hereby amended as set forth in Section 2 through Section 7 of this ordinance, with new wording being shown as underlined and deleted wording being shown as ~~struck through~~.

Section 2. Amendments to Section 23-29 (“Impact fees, with annual indexing; comparable uses; alternative impact fee calculation; periodic updates; time of payment”).

Subsection 23-29(e) is hereby amended as follows:

Sec. 23-29. Impact fees, with annual indexing; comparable uses; alternative impact fee calculation; periodic updates; time of payment.

* * *

(e) *Time of payment.*

(1) Except as otherwise permitted by subsection (e)(2) or mandated by state law, law enforcement impact fees imposed on new development shall be paid as a condition to the issuance of a building permit. In the case of a single family home or duplex, the applicant may elect to pay the applicable impact fee no later than immediately prior to the issuance of the certificate of occupancy. In the case of a mobile home, the fee shall be paid at the issuance of a tie-down permit or at the election of the applicant no later than immediately prior to the issuance of the certificate of occupancy.

(2) For the following types of projects, the law enforcement impact fee may be paid prior to the authorization of pre-power or issuance of a certificate of occupancy (temporary or otherwise), but no pre-power or certificate of occupancy shall be authorized or issued until the impact fee has been paid as provided by subsection

a. A certified multifamily affordable housing project, provided an agreement setting forth the terms and conditions of the discount and deferral of the impact fee has been executed; and

b. A new commercial project (a project without single-family homes or duplexes) with a building permit valuation of at least one million dollars (\$1,000,000.00), provided an impact fee deferral form has been executed and the service charge required under subsection (e)(4) has been paid.

(3) For any such eligible project where payment of the applicable impact fee is deferred, the impact fee for the entire project shall be paid not later than when pre-power is authorized for the first building or the first certificate of occupancy, temporary or permanent, is issued for the project.

(4) a. If the law enforcement impact fee is deferred at the time of issuance of the building permit as authorized by subsection (e)(2) for an eligible commercial project, a service charge shall be assessed and a notice of nonpayment setting forth the legal description of the property and the amount of the impact fee liability shall be executed by the county. The county shall serve this notice upon the owner by certified mail and place a lien against such property for the amount of the impact fee, and all interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district and municipal taxes.

b. Upon payment of the impact fee and any associated costs and fees, the county shall promptly record the notice of payment in the official records of the county, thereby releasing the lien.

(5) In the event the law enforcement impact fee is not paid prior to the authorization of pre-power or issuance of the first certificate of occupancy (temporary or permanent) under subsection (e)(2) above, the county shall make demand for payment of the fee. If the fee is not paid within fourteen (14) days after the county makes demand:

a. The county may collect the law enforcement impact fee, interest from the date payment was due at the rate fixed by state statute for judgments, the costs of such collection, and reasonable attorney's fees; and

b. For an eligible housing project, the building owner and/or license holder who obtained the building permit may be prohibited from obtaining any other building permits within the county until the applicable law enforcement impact fee (including any costs and fees) has been paid.

(6) The foregoing in this subsection 23-29(e) notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, payment of the law enforcement impact fee may be made not later than when pre-power is authorized for the first building, or prior to issuance of the first certificate of occupancy, temporary or permanent, whichever occurs earlier.

In all other respects, Section 23-29 shall remain unchanged.

Section 3. Amendments to Section 23-60 (“Fees; comparable uses, adjustments; periodic adjustments; time of payment.”). Subsection 23-60(e) is hereby amended to read as follows:

Sec. 23-60. Impact fees, with annual indexing; comparable uses; alternative impact fee calculation; periodic updates; time of payment.

(e) *Time of payment.*

(1) Except as otherwise permitted by subsection (e)(2) through (e)(6) or mandated by state law, fire rescue impact fees imposed on all new development shall be paid as a condition to the issuance of a building permit. In the case of a mobile home, the fee shall be paid at the issuance of a tie-down permit.

(2) For the following types of projects, the fire rescue impact fee may be paid prior to the authorization of prepower or issuance of a certificate of occupancy (temporary or otherwise), but no prepower or certificate of occupancy shall be authorized or issued until the impact fee has been paid as provided by subsection (e)(3):

a. A certified affordable housing project, provided an agreement setting forth the terms and conditions of the discount and deferral of the impact fee has been executed; and

b. A new commercial project (a project without single-family homes or duplexes) with a building permit valuation of at least one million dollars (\$1,000,000.00), provided an impact fee deferral form has been executed and the service charge required under subsection (e)(4) has been paid.

(3) For any such eligible project where payment of the impact fee is deferred, the impact fee for the entire project shall be paid not later than when prepower is authorized for the first building or the first certificate of occupancy, temporary or permanent, is issued for the project.

(4) a. If the fire rescue impact fee is deferred at the time of issuance of the building permit as authorized by subsection (e)(2) for an eligible commercial project, a service charge shall be assessed and a notice of nonpayment setting forth the legal description of the property and the amount of the impact fee liability shall be executed by the county. The county shall serve notice upon the owner by certified mail and place a lien against such property for the amount of the impact fee, and all interest, penalties, and the costs and fees for collection, coequal with the lien of all state, county, district, and municipal taxes.

b. Upon payment of the impact fee and any associated costs and fees, the county shall promptly record the notice of payment in the official records of the county, thereby releasing the lien.

(5) In the event the fire rescue impact fee is not paid prior to the authorization of prepower or issuance of the first certificate of occupancy (temporary or permanent), the county shall make demand for payment of the fee. If the fee is not paid within fourteen (14) days after the county makes demand:

a. The county may collect the fire rescue impact fee, interest from the date payment was due at the rate fixed by state statute for judgments, the costs of such collection, and reasonable attorney's fees; and

b. For an eligible housing project, the building owner and/or license holder who obtained the building permit may be prohibited from obtaining any other building permits within the county until the applicable fire rescue impact fee (including any costs and fees) has been paid.

(6) For single-family homes and duplexes, the applicant may elect to pay the applicable impact fee no later than immediately prior to the issuance of the certificate of occupancy.

(7) The foregoing in this subsection 23-60(e) notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, payment of the fire rescue impact fee may be made not later than when pre-power is authorized for the first building, or prior to issuance of the first certificate of occupancy, temporary or permanent, whichever occurs earlier.

In all other respects, Section 23-60 shall remain unchanged.

Section 4. Amendments to Section 23-91 (“Limitation of Issuance of Building Permits”). Section 23-91 is hereby amended to read as follows:

Sec. 23-91. Limitation of issuance of building permits.

(a) Except as permitted by subsection (b), no person shall carry out any traffic-generating development unless the applicable impact fee pursuant to section 23-92 or alternative impact fee pursuant to section 23-93 was paid or properly deferred at the time of issuance of the building permits, to be clearly identified as "paid or deferred under written protest" in the

case of an anticipated appeal or disagreement with the assessment.

(b) Deferral of impact fees.

(1) For the following types of projects, the transportation impact fee may be paid prior to the issuance of a certificate of occupancy (temporary or otherwise), but no certificate of occupancy shall be authorized or issued until the impact fee has been paid:

a. A certified affordable housing project, provided an agreement setting forth the terms and conditions of the discount and deferral of the impact fee has been executed;

b. A new commercial project (including a multifamily project without single-family homes or duplexes) with a building permit valuation of at least one million dollars (\$1,000,000.00), provided an impact fee deferral form has been executed and the service charge required under subsection (b)(3) has been paid; or

c. A single-family home or duplex, provided an impact fee deferral form has been executed.

(2) For any such eligible project that defers payment of the applicable transportation impact fee, the impact fee for the entire project must be paid when the first certificate of occupancy, temporary or permanent, is issued.

(3) Lien and service charge.

a. If the transportation impact fee is deferred at the time of issuance of the building permit, as authorized by subsection (b)(1) for an eligible commercial project, a service charge shall be assessed and a notice of nonpayment setting forth the legal description of the property and the amount of the impact fee liability shall be executed by the county. The county shall serve this notice upon the owner by certified mail and record it in the official records of the county. This notice shall thereupon operate as a lien against such property for the amount of the impact fee and all interest, penalties, costs, and fees for collection, coequal with lien(s) of any and all state, county, district, and municipal taxes.

b. Upon payment of the impact fee, the county shall promptly serve a notice of payment upon the owner by certified mail and record the notice of payment in the official records of the county.

(4) In the event the impact fee is not paid prior to the issuance of a certificate of occupancy (temporary or otherwise), the county shall make demand for payment of the fee. If the fee is not paid within fourteen (14) days after the county makes demand:

a. The county may collect the transportation impact fee, interest from the date payment was due at the rate fixed by state statute for judgments, the costs of such collection, and reasonable attorneys' fees; and

b. For an eligible project, the building and/or license holder who pulled the building permit may be prohibited from pulling any other building permits until the transportation impact fee has been paid.

(c) The foregoing in this section 23-91 notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, payment of the transportation impact fee may be made not later than when pre-power is authorized for the first building, or prior to issuance of the first certificate of occupancy, temporary or permanent, whichever occurs earlier.

Section 5. Amendments to Section 23-98 (“Exemptions and Discounts”).

Subsection 23-98(a) is hereby amended to read as follows:

Sec. 23-98. Exemptions and discounts.

(a) *Exemptions.* To the extent no additional traffic is anticipated to be generated, the following shall be exempted from payment of transportation impact fees:

(1) Alterations of an existing structure where the use and total footprint/size are not changed.

(2) The construction of up to twenty-five (25) percent of the square footage relative to a primary use, individually or cumulatively, of an accessory use that is subordinate and intrinsic to the primary use, not measured in the same units for transportation impact fee assessments as the primary use, and typically included in the transportation impact fee rate for the primary land use (e.g., a hotel's lobby space, laundry facilities, etc.).

(3) The replacement of a building or structure with an equivalent new building or structure, provided the previous building or structure was located on the same parcel site in 1983 or thereafter. If the land use of the replacement building or structure is different from that of the previous structure, the

exemption shall be limited to the current equivalent fee for the original structure. Documentation of the existence of the building or structure shall be submitted to the Community, Environmental, and Development Services Department, Fiscal and Operational Support Division. This section is not intended to preclude architectural enhancements or facade improvements to an existing structure as long as no additional net usable square footage is added. When determining the amount of exemption, the highest and best use previously assessed and paid shall be used.

(4) The construction of agricultural structures as defined in section 23-88.

(5) Golf courses constructed in conjunction with and as part of a resort hotel or time share.

(6) Toll facility service plazas.

(7) Covered parking or parking garages.

(8) County facilities constructed for nonproprietary governmental purposes.

(9) Structures or buildings that, due to and as a part of condemnation proceedings by the county and subject to a formal written agreement between the owner and the county, are moved to another parcel within the same impact fee zone.

(10) Structures or buildings constructed entirely by or for Orange County Public Schools or by or for a Florida College System Institution or State University, as those terms are defined in Section 1000.21, Florida Statutes.

(11) The foregoing section 23-98(a)(3) notwithstanding, for the period from November 13, 2009, through August 15, 2014, and regardless of the impact on traffic generation rates, change in use permits and alterations of a residential structure existing as of September 17, 2008, where the use is changed, provided such new use is located within the urban service area boundary, is consistent with the existing zoning of such property and consistent with the county's current Comprehensive Plan, and provided further that the size of the existing structure is not increased, and the footprint of the existing structure is not modified, shall be exempted from payment of the transportation impact fee in an amount up to, but not exceeding, one hundred thousand dollars (\$100,000.00).

(12) The foregoing subsection 23-98(a)(3) notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, and regardless of the impact on traffic generation rates, change in use permits and alterations of a residential structure existing as of July 28, 2020, where the use is

changed, provided such new use is located within the urban service area boundary, is consistent with both the existing zoning of such property and the county's current Comprehensive Plan, and provided further that the size of the existing structure is not increased and the footprint of the existing structure is not modified, shall be exempted from payment of the applicable transportation impact fee in an amount up to, but not exceeding, \$100,000.00.

In all other respects, Subsection 23-98 shall remain unchanged.

Section 6. Amendments to Section 23-142 (“Payment”). Section 23-142 is hereby amended as follows:

Sec. 23-142. Payment.

(a) Except as otherwise provided in this article, prior to the issuance of a building permit for multi-family residential (with the exception of duplexes) or townhouse construction, an applicant shall pay the school impact fee as set forth in section 23-141, Orange County Code. However, for single-family detached homes or duplexes, the applicant may elect to pay the applicable fee no later than immediately prior to the issuance of the certificate of occupancy.

(1) If the residential construction is located within the unincorporated area of the county, or within the municipal boundaries of a city in which the county has taken responsibility for the issuance of building permits, the school impact fee shall be paid to and collected by the county.

(2) If the residential construction is located within the municipal boundaries of a city, the school impact fee shall be paid to and collected by that city.

(b) Any school impact fee collected by the county or by a city shall be held by them separate and distinct from all other revenues and shall be transferred at least quarterly to the school board for deposit in the school impact fee trust account.

(c) The payment of the school impact fee shall be in addition to all other fees, charges or assessments due

for the issuance of a building permit and the subsequent certificate of occupancy.

(d) The obligation of payment of the school impact fee shall run with the land.

(e) The impact from the development shall be calculated at the time of issuance of the building permit. If the applicant for a single-family or duplex home elects to pay the applicable impact fee after the issuance of the building permit, but no later than prior to the issuance of the certificate of occupancy, the impact fee due shall be calculated to be the fee due on the day of issuance of the building permit.

(f) The foregoing in this section 23-142 notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, payment of the school impact fee may be made not later than when pre-power is authorized for the first building, or prior to issuance of the first certificate of occupancy, temporary or permanent, whichever occurs earlier.

Section 7. Amendments to Section 23-180 (“Impact fees; comparable uses, adjustments; periodic adjustments; time of payment.”). Subsection 23-180(e) is hereby amended to read as follows:

Sec. 23-180. Impact fees; comparable uses, adjustments; periodic adjustments; time of payment.

(e) Time of payment.

(1) Except as otherwise permitted herein or as mandated by state law, parks and recreation impact fees imposed on new residential development shall be paid as a condition to the issuance of a building permit; for a mobile home, the impact fee shall be paid at the issuance of a tie-down permit. For the following types of projects, the parks and recreation impact fee may be paid prior to the issuance of a certificate of occupancy (temporary or permanent) provided an impact fee deferral form has been executed:

a. A certified affordable housing project, as determined by the manager of the county's housing and community development division or a designee;

b. New multifamily projects (without single-family homes, townhomes, duplexes, triplexes, or quadraplexes) with a building permit valuation of at least one million dollars (\$1,000,000.00); and

c. A single-family home or duplex.

(2) For any such eligible project that defers payment of the applicable parks and recreation impact fee, the impact fee for the entire project shall be paid prior to issuance of the initial certificate of occupancy, temporary or permanent, for the project; provided, however, that for multi-building projects:

a. the impact fee may be paid on a building-by-building basis prior to issuance of the first certificate of occupancy, temporary or permanent, for each building in the project subject to such impact fee;

b. a service charge will be assessed and a notice of nonpayment setting forth the legal description of the property and the amount of the impact fee liability shall be executed by the county;

c. the county shall place a lien against such property and record it in the official records of the county for the amount of the impact fee, all interest, and the costs and fees for collection, coequal with the lien of all state, county, district, and municipal taxes; and

d. upon payment of the impact fee and any associated fees and costs, the county shall promptly record the notice of payment in the official records of the county thereby releasing the lien.

(3) In the event the parks and recreation impact fee is not paid prior to issuance of the initial certificate of occupancy (temporary or otherwise), the county shall make demand for payment of the impact fee. If the impact fee is not paid within fourteen (14) days after the county makes demand:

a. The county may collect the impact fee, interest from the date payment was due at the rate fixed by state statute for judgments, the costs of such collection, and reasonable attorneys' fees; and

b. For an eligible project, the building owner and/or license holder who obtained the building permit(s) may be prohibited from obtaining any other building permits within the county until the applicable parks and recreation impact fee (including any costs and fees) has been paid.

(4) The foregoing in this section 23-180 notwithstanding, for the period beginning August 3, 2020, and ending July 30, 2021, payment of the park impact fee may be made not later than when pre-power is authorized for the first building, or prior to issuance of the first certificate of occupancy, temporary or permanent, whichever occurs earlier.

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Section 8. Applicability. This ordinance is not intended to, nor shall it, affect any binding agreements effective and existing as of the Effective Date.

Section 9. Effective Date. This ordinance shall take effect pursuant to general law.

ENACTED THIS ____ DAY OF JUL 28 2020, 2020.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, Orange County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

