

ORDINANCE NO. 2023-__

AN ORDINANCE AMENDING THE ORANGE COUNTY PARKS AND RECREATION IMPACT FEE ORDINANCE CODIFIED AT ARTICLE VI, CHAPTER 23, OF THE ORANGE COUNTY CODE; PROVIDING FOR UPDATED PARKS AND RECREATION IMPACT FEES, INCLUDING INCREASED PARKS AND RECREATION IMPACT FEES IN ALL LAND USE CATEGORIES; PROVIDING AN EFFECTIVE DATE, AND DIRECTING THE CLERK OF THE BOARD TO PUBLISH A TIMELY NOTICE STATING THAT THE BOARD HAS ADOPTED THIS ORDINANCE IMPOSING INCREASED PARKS AND RECREATION IMPACT FEES, WITH ANNUAL INDEXING.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Amendments to Article VI, Chapter 23, Orange County Code. Article VI, Chapter 23, Orange County Code (“Parks and Recreation Impact Fee”) is hereby amended to read as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

ARTICLE VI

PARKS AND RECREATION IMPACT FEE

Sec. 23-175. Short title, authority and applicability.

(a) This article shall be known and may be cited as the “Orange County Parks and Recreation Impact Fee Ordinance.”

(b) The board of county commissioners has authority to adopt this article through general charter county home rule powers pursuant to Article VIII, Section 1(g), Florida Constitution; F.S. chs. 30, 125, and 163; and the Orange County Charter, consistent with F.S. § 163.31801, the Florida Impact Fee Act.

(c) Planning for additional capital improvements needed to serve new growth and development that generate additional

demands on parks and recreation facilities and the implementation of these needs is a responsibility of the county under F.S. ch. 163, pt. II [F.S. § 163.3161 et seq.], and is in the best interest of the health, safety, and welfare of the citizens of the unincorporated area of Orange County.

Sec. 23-176. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

Accessory dwelling unit shall have the meaning contained in section 38-1 of the Orange County Code~~mean living quarters (including kitchen and bathroom facilities) that are separate and distinct from and secondary and subordinate to the primary single-family dwelling unit. The living quarters may be attached to or detached from the primary dwelling unit. An accessory dwelling unit connected to a primary dwelling unit by a breezeway, roofed passage or similar structure shall be deemed a detached accessory dwelling unit.~~

Activity-based park means a park that contains predominantly user-oriented facilities conducive to such activities that include, but are not limited to, tennis, basketball, paved trails, swimming, and baseball.

Affordable housing shall mean~~—, as applicable, affordable housing as defined in section 23-183, or housing as described set forth~~ in Orange County Administrative Regulation No. 4.08, as it may be amended or replaced from time to time.

Capital cost shall mean any expenditure for a capital improvement.

Capital improvements shall include, but not be limited to, site planning, land acquisition, site improvements, buildings, facilities equipment, and motor vehicles, but excludes operations and maintenance. Acquisition of a “capital improvement” means the purchase of a capital improvement that expands the capacity of the Orange County Parks and Recreation Division to provide parks and recreation facilities made necessary by new residential development in the unincorporated area.

Certificate of occupancy shall mean a certificate issued by the Orange County Division of Building Safety upon completion of a building erected in accordance with approved plans, and after final

inspection of a building, stating, at a minimum, the nature of the occupancy permitted, the number of persons for each floor when limited by law, and the allowable load per square foot for each floor in accordance with the Florida building code.

Community park shall mean a park that usually ranges in size from twenty (20) to one hundred forty-nine (149) acres and, because of the diversity of amenities offered, has a service area ranging from a three-mile radius to the entire county. Community parks are usually located near major collector streets or arterial roads and are most often accessed by car. Community parks typically provide both activity-based amenities such as athletic fields, swimming pools, and multipurpose courts and resource-based amenities such as natural areas for walking, jogging, picnicking, lake access, and other passive recreational activities.

Comprehensive plan shall mean the Orange County 2010-2030 Comprehensive Plan required pursuant to section 163.3177, Florida Statutes (adopted by the Board of County Commissioners on May 19, 2009, as may be amended or replaced from time to time).

County facilities constructed for nonproprietary governmental purposes shall mean facilities constructed by or for the county to be used for governmental purposes, but shall exclude Orange County Utilities Department and Orange County Convention Center Facilities.

Development shall mean any improvement that requires a building permit.

District park shall mean a park that typically ranges in size from one hundred fifty (150) to five hundred (500) acres and usually has a county-wide service area. Access to district parks is most often by car. These parks are usually classified as resource-based and are usually located contiguous to or encompassing natural resources. Amenities offered typically include playgrounds, play fields, and family recreation centers although, when located near urban or population centers, district parks can provide activity-based recreation facilities such as sports complexes.

Dwelling unit shall mean any of the following: single-family or multifamily dwelling unit, attached or detached dwelling unit, house of conventional construction, mobile homes, manufactured homes, modular homes, and any other structures used for permanent residence or for dwelling purposes, regardless of whether occupied by an owner or tenant. The term shall not include hotel, motel, timeshares, lodginghouse, or recreational vehicle parks.

118 *Impact fee study* shall mean the “Orange County Parks and
Recreation Impact Fee Update Study” prepared by ~~Tindale-~~
~~Oliver~~Benesch, dated ~~June 7, 2017~~October 26, 2022.

120 *Level of service* shall mean the total capital asset value, as set
122 forth in the impact fee study of parks and recreation facilities per
one thousand (1,000) residents in the unincorporated area.

124 *Low income* shall mean as set forth in Orange County
Administrative Regulation No. 4.08, as it may be amended or
replaced from time to time.

126 *Mobile home or manufactured home* shall mean a structure
transportable in one (1) or more sections, which structure is eight (8)
128 feet or more in width and over thirty-five (35) feet in length, and
which structure is built on an integral chassis and designed to be
130 used as a dwelling when connected to the required utilities, and
includes the plumbing, heating, air conditioning, and electrical
132 systems contained therein.

134 *Modular home* shall mean a factory-built home constructed in
compliance with the (local or) state building code and consistent
with the Florida Department of Economic Opportunity, formerly
136 known as the Florida Department of Community Affairs, as
applicable to modular housing.

138 *Multifamily* shall mean a dwelling unit located in a building or
a portion of a building (including, but not limited to apartments,
140 townhomes, duplexes, triplexes, quadraplexes, and condominiums),
regardless of form of ownership, which building contains more than
142 one (1) dwelling unit designed for occupancy by a single family.

144 *Parks and recreation facility* shall mean an activity-based park
or a resource-based park. Such a park shall be limited to a
community park, a district park, a regional park, or a specialty park.

146 *Park service area* shall mean the approximate geographic area
and population served by a parks and recreation facility as set forth
148 in the comprehensive plan.

150 *Regional park* shall mean a park that is usually five hundred
(500) acres or more and tends to serve a multi-county service area.
Access to these parks is most often by car. Regional parks are
152 usually resource-based and located in areas of diverse or unique
natural resources, such as lakes, streams, marshes, flora, fauna, or
topography. Activity-based facilities may be located at regional
154

156 parks as long as the activity does not negatively impact the natural
resources.

158 *Residential development* shall mean any development designed
or intended to be used as a dwelling unit.

160 *Resource-based parks* shall mean parks that are predominantly
natural resource-based and conducive to such activities that include,
162 but are not limited to, fishing, lake swimming, hunting, camping,
and picnicking.

164 *Retirement housing/age-restricted housing* shall mean housing
that prohibits permanent residency (longer than ninety (90) days) by
166 persons under the age of eighteen (18) by recorded deed restriction,
recorded declaration of covenants and restrictions, recorded plat
168 restrictions, or other restrictions provided by law, and which
qualifies as one (1) of the three (3) types of communities designed
for older persons as “housing for older persons” in the Housing for
170 Older Persons Act, 42 U.S.C. § 3607(b).

172 *Single-family* shall mean the primary use of a lot for a dwelling
unit not attached to any other dwelling unit, including a modular
home.

174 *Specialty park* shall mean a park designed for predominantly
one (1) activity or use such as a multi-use trail, golf course,
176 equestrian complex, sports complex, indoor recreation center, skate
park, or historic site. Because their use varies, standards cannot be
178 quantified for specialty parks. The size of specialty parks varies,
depending on their particular use. A specialty park typically serves
180 the entire county.

182 *Very low income* shall mean as set forth in Orange County
Administrative Regulation No. 4.08, as it may be amended or
replaced from time to time.

184 **Sec. 23-177. Rules of construction.**

186 For the purposes of administration and enforcement of this
article, unless otherwise stated in this article, the following rules of
construction shall apply:

188 (a) In case of any difference of meaning or implication
between the text of this subdivision and any caption, illustration,
190 summary table, or illustrative table, the text shall control.

192 (b) The word “shall” is always mandatory and not
discretionary; the word “may” is permissive.

194 (c) Words used in the present tense shall include the
future and words used in the singular number shall include the plural
196 and the plural the singular, unless the context clearly indicates the
contrary.

198 (d) The word “person” includes an individual, a
corporation, a partnership, an incorporated association, or any other
similar entity.

200 (e) Unless the context clearly indicates the contrary,
where a regulation involves two (2) or more items, conditions,
202 provisions, or events connected by the conjunction “and,” “or,” or
“either ... or,” the conjunction shall be interpreted as follows:

204 (1) *And* indicates that all the connected terms,
conditions, provisions, or events shall apply.

206 (2) *Or* indicates that the connected items,
conditions, provisions, or events may apply singly or in any
208 combination.

210 (3) *Either ... or* indicates that the connected
items, conditions, provisions, or events shall apply singly but not in
combination.

212 (f) The word “includes” shall not limit a term to the
specific example but is intended to extend its meaning to all other
214 instances or circumstances of like kind or character.

Sec. 23-178. Findings and declarations.

216 (a) The board of county commissioners finds that new
residential development in the unincorporated area of Orange
218 County requires additional parks and recreation facilities as operated
by the parks and recreation division. It is the policy of the board, as
220 set forth in the comprehensive plan, that such new development
should be permitted to occur only where an adequate level of parks
222 and recreation facilities can be provided.

224 (b) It is the policy of the board of county commissioners
that new residential development in the unincorporated area should
pay a portion of the overall capital costs related to the additional
226 parks and recreation facilities to accommodate such new
development.

(c) A purpose of this article is to ensure the provision of an adequate level of parks and recreation facilities throughout the unincorporated area so that new residential development in the unincorporated area may occur in a manner consistent with the level of service.

(d) A purpose of this article is to require new residential development in the unincorporated area to bear a portion of the overall capital costs related to parks and recreation facilities made necessary by such new development.

(e) The board of county commissioners finds that impact fees provide a reasonable method of regulating new residential development in the unincorporated area to ensure that such new development pays a portion of the capital costs of parks and recreation facilities necessary to accommodate such new development.

(f) The parks and recreation division operates parks and recreation facilities throughout the unincorporated area, without regard to the location of residential development. Because of this public policy, the capital improvements that are funded with impact fee revenue cannot and will not be restricted to zones or districts created for administrative purposes. The capital improvements funded by impact fees shall provide parks and recreation facilities to serve new development within the unincorporated area.

(g) The provision of parks and recreation facilities is deemed to be a governmental service to be provided on a uniform basis throughout the unincorporated area. All new residential development creates an impact upon the cost of providing parks and recreation facilities. The cost of providing such parks and recreation facilities has been allocated according to the type of residential development.

(h) The additional impact imposed by new residential development upon the capital costs of providing parks and recreation facilities occurs at the time that development of the property takes place.

(i) The provisions of this article relating to adequate parks and recreation facilities in the unincorporated area, the additional parks and recreation facilities needed for new residential development in the unincorporated area, the capital costs relating to those additional parks and recreation facilities needed for new residential development in the unincorporated area, and the impact

fees for those capital costs, are based upon, consistent with, and supported by the findings contained within the impact fee study.

(j) The board of county commissioners approves and adopts the impact fee study, which is based on the most recent and localized data.

(k) The level of service documented in the impact fee study for parks and recreation facilities within the unincorporated area is consistent with the adopted level of service standards included in the Recreation Element of the Comprehensive Plan and is essential to and in the best interests of the public health, safety, and general welfare of the citizens of the county.

(l) The following measures of level of service for parks and recreation facilities are consistent with the adopted level of service standards included in the Recreation Element of the Comprehensive Plan and are established for the sole purpose of determining the amount of the impact fees indicated in section 23-180:

(1) Activity-based park: One and one-half (1.5) acres/one thousand (1,000) unincorporated population;

(2) Resource-based park: Six (6) acres/one thousand (1,000) unincorporated population.

For the purpose of determining the amount of the impact fees indicated in section 23-180, the benefit to the impact fee payer is calculated as the total capital asset value of the parks and recreation facilities, which is defined in the impact fee study as land cost and facility and equipment cost. Those assets include lands, facilities and equipment as further defined in the impact fee study.

(m) It is the intent of the board of county commissioners that the impact fees imposed pursuant to this article be used to pay for those capital costs related to additional parks and recreation facilities required for new residential development in the unincorporated area.

(n) Based on the impact fee study, the board of county commissioners finds that a reasonable relationship, or rational nexus, exists between the capital costs of providing parks and recreation facilities and the impact fees imposed on new residential development in the unincorporated area by this article.

(o) The board of county commissioners finds that a reasonable relationship, or rational nexus, exists between the impact fees to be collected pursuant to this article and the expenditure of those funds on capital improvements relating to parks and recreation facilities in the unincorporated area, as limited and restricted by this article.

Sec. 23-179. Parks and recreation impact fee fund established.

(a) There is hereby established a parks and recreation impact fee fund for the impact fees collected pursuant to this article.

(b) Funds withdrawn from the parks and recreation impact fee fund established hereby shall be used in accordance with this article.

Sec. 23-180. Impact fees; annual indexing; comparable uses; alternative impact fee calculation; periodic adjustments; time of payment.

(a) *Impact fees.* The following impact fees with annual indexing at ~~three and seven~~four and one-tenths (~~3.74.1~~) percent, are imposed upon all new residential development in the unincorporated area:

Parks and Recreation Impact Fee Schedule

<i>Land Use</i>	<i>Impact Fee Per Dwelling Unit</i>				
	<i>Year 1: May 1, 2018— April 30, 2019 (1)</i>	<i>Year 2: May 1, 2019— April 30, 2020 (2)</i>	<i>Year 3: May 1, 2020— April 30, 2021 (3)</i>	<i>Year 4: May 1, 2021— April 30, 2022 (4)</i>	<i>Year 5: May 1, 2022— April 30, 2023 (5)</i>
Single family (detached)	\$1,544	\$1,601	\$1,660	\$1,721	\$1,785
Accessory Dwelling Unit	\$1,044	\$1,083	\$1,123	\$1,165	\$1,208
Multi-Family	\$1,044	\$1,083	\$1,123	\$1,165	\$1,208
Mobile Homes	\$1,150	\$1,193	\$1,237	\$1,283	\$1,330
Retirement Housing/Age Restricted*	\$827	\$858	\$890	\$923	\$957
Annual Index⁽⁶⁾	3.7%	3.7%	3.7%	3.7%	

<u>Land Use</u>	<u>Unit</u>	<u>Ph. 1</u>	<u>Ph. 2</u>	<u>Ph. 3</u>	<u>Ph. 4</u>	<u>May 1, 2025 (2)</u>	<u>May 1, 2026 (3)</u>	<u>May 1, 2027 (4), (5)</u>
		<u>May 1, 2023</u>	<u>May 1, 2024</u>	<u>Sept 1, 2024</u>	<u>Jan 1, 2025 (1)</u>			
ANNUAL INDEX						4.1% (6)	4.1% (6)	4.1% (6)
-	-	-	-	-	-	-	-	-
Single Family Detached	du	\$1,900	\$2,016	\$2,131	\$2,246	\$2,338	\$2,434	\$2,534
Multi-Family	du	\$1,350	\$1,492	\$1,492	\$1,492	\$1,553	\$1,617	\$1,683
Mobile Homes	du	\$1,421	\$1,512	\$1,603	\$1,694	\$1,763	\$1,835	\$1,910
Retirement Housing/Age-Restricted*	du	\$1,021	\$1,085	\$1,148	\$1,212	\$1,262	\$1,314	\$1,368

*Any senior housing community or dwelling unit that loses its qualification as housing for older persons or that allows permanent occupancy by persons under the age of eighteen (18) may be required to pay the otherwise applicable park impact fee in effect at the time of the loss of the qualification as housing for older persons or the permanent occupancy by persons under the age of eighteen (18).

(1) Source: Table 10 of the impact fee study

(2) ~~Year 1 figures Phase 4 rates~~ multiplied by (1+0.03741), annual index

(3) ~~Year 2 figures May 2025 rates~~ multiplied by (1+0.03741), annual index

(4) ~~Year 3 figures May 2026 rates~~ multiplied by (1+0.03741), annual index.

(5) ~~Year 4 figures multiplied by (1+0.037), annual index.~~ In the event the impact fee schedule is not updated by May 1, 2023~~8~~, the impact fees shall continue at the ~~Year 5 May 2027~~ rates until the impact fee schedule is updated.

(6) Source: Table 14 of the impact fee study

(b) *Determination of comparable uses.* In the event the land use for which the building permit is sought is not specified in the impact fee schedule, the director of the community,

environmental, and development services department or his or her designee shall make a determination as to the appropriate land use designation. Such determination may be appealed to the impact fee committee pursuant to Administrative Regulation No. 4.01 upon payment of a nonrefundable processing fee.

(c) *Alternative impact fee calculation.*

(1) In the event an applicant believes that the costs of parks and recreation facilities to serve its proposed residential development is less than the fee established in section 23-180, the applicant may, at its sole expense, submit an alternative fee calculation to the county's [Impact Fee Committee](#) pursuant to the provisions of this section. Such an alternative fee calculation 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.

If 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. The proposed residential development shall be presumed to contain the maximum number of units-resulting from the most intensive use permitted under the applicable land development regulations such as the comprehensive plan or zoning regulations or under applicable deed or plat restrictions.

(2) The alternative impact fee calculations shall be limited to the demand component of the impact fee equation and shall be based on data, information, or assumptions contained in this article or independent sources, provided that the independent source is a county-accepted source and the independent source is a local study carried out pursuant to an accepted methodology.

(3) If a previous residential project has submitted a local study consistent with the criteria required herein, and if such study is determined by the county to be current, the impact upon the parks and recreation facilities as described in such prior local study shall be presumed to exist for other similar residential projects. In such circumstances, the alternative parks and recreation impact fee shall be established to reflect the impact upon the parks and recreation facilities as described in the prior local study. There shall be a rebuttable presumption that an alternative impact fee study conducted more than three (3) years earlier is invalid.

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392 (4) The provisions of this section 23-180 shall be
394 implemented and administered in accordance with the procedures
set forth in Orange County Administrative Regulations Nos. 4.01
and 4.02, as may be amended from time to time.

396 (5) Any agreement proposed by an applicant
398 pursuant to this subsection must be presented to and approved by the
BCC prior to the issuance of any certificate of occupancy, temporary
400 or permanent. Any such agreement may provide for execution by
mortgagees, lien holders, or contract purchasers in addition to the
402 landowner, and may permit any party to record such agreement in
the official records of the county. The BCC shall approve such an
404 agreement only if it finds that the agreement will apportion the
burden of expenditure for new facilities in a just and equitable
406 manner, consistent with the principles set forth in *Contractors &
Builders Association v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976),
Hollywood Inc. v. Broward County, 432 So. 2d 606 (Fla. 4th DCA
408 1983), *cert. denied*, 440 So. 2d 352 (Fla. 1983); and *Home Builders
and Contractors Association of Palm Beach County, Inc. v. Board
of County Commissioners of Palm Beach County*, 446 So. 2d 140
410 (Fla. 4th DCA 1984), *cert. denied*, 451 So. 2d 848 (Fla. 1984).

412 (6) Any applicant or owner who submits a
414 proposed alternative parks and recreation impact fee pursuant to
this section and desires the immediate issuance of a building permit
416 shall pay, prior to the issuance of the building permit, the
applicable parks and recreation impact fee pursuant to section 23-
180, Orange County Code. Such payment shall be paid to the
418 county and shall be noted in writing as “paid under protest” and
shall not be construed as a waiver of any review rights. Any
420 difference between the amount paid and the amount due, as
determined by the county, shall be refunded to the applicant or
422 owner. The county shall not pay interest on the funds paid under
protest and subsequently refunded unless interest has been earned
on such funds.

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426 (d) *Periodic adjustments.* This article shall be reviewed
by the board of county commissioners at least every five (5) years.
428 The review shall consider changes to the inventory, service delivery,
unit costs, value of the assets, and credits based on historical and
430 proposed funding of parks and recreation facilities with non-impact
fee revenue. The purpose of this review shall be to analyze the
432 effects of inflation and other factors on the actual costs of capital
improvements, and to review and revise, if necessary, the impact fee
charged new residential development to ensure it will not exceed its

pro rata share for the reasonably anticipated expansion costs of capital improvements for parks and recreation facilities necessitated by new residential development.

(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.~~

Sec. 23-181. Presumptions; limitations; date of impact; appeal process; refunds.

(a) *Development presumed to have maximum impact permitted.* The proposed residential development shall be presumed to have the maximum impact on the necessary parks and recreation facilities as permitted under the most restrictive of the applicable land development regulations, such as zoning regulations, the county land use plan, the county facility master plan, applicable deed or plat restrictions, or the building permit application.

(b) *Limitations on expenditure of funds collected.* The impact fees collected by the county pursuant to this article shall be kept as a separate fund from other revenue of the county. The use of such funds shall be restricted to expenditures for capital improvements at community parks, district parks, regional parks and specialty parks to benefit new residential development within the unincorporated area. Any funds on deposit not immediately

necessary for expenditure shall be invested in interest-bearing accounts. All interest income derived from monies collected shall be deposited in the impact fee trust account. The impact fee funds shall be neither geographically segregated nor restricted for expenditure in any sub-area of the unincorporated area. The impact fee funds shall be collected and expended in a manner consistent with the comprehensive plan and the principles set forth in *Contractors and Builders Association v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976) and *Hollywood Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983), *cert. denied*, 440 So. 2d 352 (Fla. 1983) and otherwise consistent with all requirements of the Constitution of the United States, the Constitution of the State of Florida, and all applicable laws.

(1) Parks and recreation impact fees shall not be expended on capital improvements pursuant to this article unless or until the board of county commissioners approves such expenditures at a public hearing.

(c) *Development impact calculated at time of issuance of building permit.* The impact from the proposed residential 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 initial certificate of occupancy, temporary or permanent, the impact fee due shall be calculated to be the impact fee due on the day of issuance of the building permit.

(d) *Appeals process.*

(1) If an applicant disagrees with the determination rendered by county staff, the applicant may appeal the determination to the county's impact fee committee, pursuant to Administrative Regulations 4.01 and 4.02, as may be amended, upon payment of a nonrefundable processing fee. If the applicant decides to appeal the determination, the applicant shall file a written notice of appeal with the committee coordinator not later than fifteen (15) days after the date that the staff written determination was rendered. If the notice of appeal is not filed within the fifteen-day period, the applicant waives the right to appeal the determination. Within fifteen (15) days after receipt of the written notice of appeal, a hearing date and time shall be assigned and notice given to the applicant.

(2) In the event the applicant disagrees with the decision of the impact fee committee, the applicant may appeal the decision to the development review committee by filing a written notice of appeal with the chair of the development review committee and payment of a nonrefundable processing fee, within fifteen (15) days after the decision.

(3) In the event the applicant disagrees with the decision of the development review committee, the applicant may appeal the decision to the Orange County BCC by filing a written notice of appeal with the chair of the development review committee and payment of a nonrefundable processing fee, within fifteen (15) days after the decision.

(4) In the event an applicant disagrees with the decision of the BCC, the applicant may challenge such decision in the circuit court by filing a petition for writ of certiorari no later than thirty (30) days from the date of issuance of the decision of the BCC.

(5) The county shall not pay interest on any funds paid under protest and subsequently refunded, unless the county has earned interest on such funds.

(e) *Refunds.* Any impact fee refund must comply with the provisions of Orange County Administrative Regulation No. 4.04.01, as may be amended.

Sec. 23-182. Credits.

(a) An applicant shall be entitled to a credit against an impact fee assessed pursuant to this article in an amount equal to the actual, reasonable, incurred cost of improvements or value of land contributed for a parks and recreation facility, provided that each of the following criteria has been satisfied:

(1) The parks and recreation facility or project is included in the then existing five-year capital improvement program;

(2) The improvement or contribution of land was required by the county as a condition of a development permit issued by the county;

(3) The improvement or contribution of land is deemed acceptable to the manager of the parks and recreation division;

(4) For a contribution of land, the land is at least twenty (20) acres in size or, if it is less than twenty (20) acres in size, the land is for a specialty park, such as, but not limited to, a boat ramp or a trail segment;

(5) The improvement or contribution of land was made directly by the applicant; and

(6) A developer's agreement setting forth the terms and conditions of the award of the credit has been executed and approved by the BCC.

(b) Except as may be otherwise provided under the comprehensive plan or the Orange County Code, including the Village Land Use Classification Implementation in Chapter 30 and the Village Planned Development Code in Chapter 38 (Horizon West), the cost of improvements shall be based on the actual cost of improvements as certified by a licensed professional engineer or a licensed professional architect, and approved by the county.

(c) Except as may be otherwise provided under the comprehensive plan or the Orange County Code, including the Village Land Use Classification Implementation in Chapter 30 and the Village Planned Development Code in Chapter 38 (Horizon West), the value of a contribution of land shall be based on the following criteria:

(1) A pro rata share of the appraised land value of the parent tract (which land value is based on the "date of valuation" as defined in subsection (c)(2)), as determined by an appraiser with an M.A.I. designation, who is acceptable to the county, was selected and paid for by the applicant, and used accepted appraisal techniques. The appraisal must meet the Uniform Standards of Professional Appraisal Practice. If the appraisal does not conform to the requirements of this article and the applicable Orange County Administrative Regulations, the appraisal shall be corrected and resubmitted. In the event the county accepts the methodology of the appraisal but disagrees with the appraised value, it may engage another appraiser and the value, for purposes of impact fee credit calculation, shall be an amount equal to the average of the two (2) appraisals. In the alternative, the appraised land value of the parent tract may be as negotiated and stated as a specific dollar

value on a per-acre basis in a developer's agreement between the applicant and the county.

(2) As used in this section, "date of valuation" shall mean:

a. For residential projects that enter into a developer's agreement with the county pertaining to a condition of development requiring the contribution of land, the date of valuation shall include a determination of the land use to be used in the evaluation and shall be calculated as either an agreed upon date or the day before the date on which the developer's agreement becomes effective. The developer's agreement shall specifically state the date of valuation and the determined land use to be used in the evaluation, or in the alternative, the developer's agreement may state as a specific dollar value the negotiated appraised land value of the parent parcel on a per-acre basis.

b. For projects where valuation is not stated in a developer's agreement that are zoned or are being rezoned to planned development (PD) and:

i. The PD has no land use approval, provided the land use approval imposes a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the land use approval.

ii. The PD has land use approval and is seeking either a preliminary subdivision plan or development plan approval then:

a) Provided the existing land use plan imposed a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the land use approval.

b) If the existing land use plan did not impose a condition of development requiring the contribution of land, but the preliminary subdivision plan and/or the development plan imposes a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the development plan approval.

c. For projects that are in conventional zoning districts and are subject to the Subdivision Regulations, Orange County Code, Chapter 34, then provided the preliminary subdivision plan imposed a condition of development requiring the contribution of land, the date of valuation shall be the day before the date of the rezoning of the property.

d. For projects that are in conventional zoning districts and subject to the Orange County Site Development Ordinance (sometimes referred to as the Commercial Site Plan Process), Orange County Code, Chapter 30, Article VIII, and the project has an existing plan or a proposed plan of which approval by the county requires the contribution of land, the date of valuation shall be the day before the date of the rezoning of the property.

e. In applying subsections (c)(2)b., (c)(2)c., and (c)(2)d. above, on the date of valuation no consideration shall be given to the proposed land use and/or zoning pending under the requested application; in other words, only the actual land use/zoning existing on the date of valuation shall be utilized for calculating value.

(d) An applicant shall apply for the credit for an improvement or contribution not later than the date of issuance of the project's first building permit for vertical construction.

714 (e) An applicant is not entitled to use any portion of a
716 credit account granted pursuant to this section to obtain a refund for
718 impact fees that were previously paid for building permits issued
prior to the date of the county's receipt of the credit application,
unless the applicant has entered into an agreement with the county
that provides otherwise.

720 (f) A portion or all of a credit account may be assigned
and reassigned under terms and conditions acceptable to the county.

722 (g) Except in the case of a good faith mistake, if an
applicant pays the impact fee when a credit could have been used,
724 the applicant is not entitled to a refund for the impact fees paid.

Sec. 23-183. Exemptions and discounts.

726 The following types of development are exempt from the
payment of the impact fees imposed pursuant to this article:

728 (a) Any addition or expansion to a residential building
which does not increase the number of dwelling units in the
730 building.

732 (b) Any accessory building, including detached or
attached garages, for a subordinate or incidental use to a single-
family or multifamily dwelling unit on the same residential property
734 or the primary residential building, which building does not
constitute a dwelling unit.

736 (c) The replacement of a building or structure with a new
building or structure, provided that the original building or structure
738 was located on the site on January 1, 2006, or thereafter, and
provided that if the land use of the replacement building or structure
740 is different from the original structure, the exemption shall be
limited to the current equivalent fee for the original structure.
742 Documentation of the existence of the building or structure shall be
submitted to the community, environmental, and development
744 services department, fiscal and operational support division. When
determining the amount of an exemption, the highest and best use
746 that was previously assessed and paid shall be applied, whenever
available.

748 (d) The expansion of or addition to a structure, provided
that such expansion or addition does not require the issuance of a
750 certificate of occupancy.

(e) County facilities constructed for nonproprietary governmental purposes.

(f) An accessory dwelling unit as defined in section 38-1, Orange County Code, provided, however, that the living area of the accessory dwelling unit does not exceed one thousand five hundred (1,500) square feet. An accessory dwelling unit with a living area that exceeds 1,500 square feet shall be charged the single-family detached impact fee rate as set forth in Section 23-180, hereof.

(g) Any project that meets or exceeds the definition of “affordable” pursuant to Section 163.31801(9), Florida Statutes, as may be amended, may be exempted from all or a portion of the payment of impact fees, provided the level and duration of such affordability is documented to the County’s satisfaction prior to the granting of any impact fee exemption.

Sec. 23-184. Return of funds.

The impact fees collected pursuant to this article shall be returned to the then-present owner of the development if the impact fees have not been encumbered or spent by the end of the calendar quarter immediately following six (6) years from the date the impact fees were received, or if the development for which the impact fees were paid was never begun, in accordance with the following procedure:

(a) The then-present owner must petition the board of county commissioners for the refund within one (1) year following the end of the calendar quarter immediately following six (6) years from the date on which the impact fee was received.

(b) The petition shall be submitted to the county, and shall contain:

(1) A notarized sworn statement that the petitioner is the current owner of the property;

(2) A copy of the dated receipt issued for payment of the impact fee;

(3) A certified copy of the latest recorded deed;
and

(4) A copy of the most recent ad valorem tax bill.

(c) Within sixty (60) days from the date of receipt of a petition for refund, the county shall advise the petitioner and the board of county commissioners of the status of the impact fee requested for refund. For purposes of determining whether impact fees have been spent or encumbered, the first money placed in the trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made in accordance with section 23-181.

(d) When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following six (6) years from the date the fees were paid, the money shall be returned without interest, unless the county earned interest on the funds.

Sec. 23-185. Parks and recreation facility five-year capital improvement plan.

The board of county commissioners shall review the parks and recreation facility five-year capital improvement plan at least once each year and shall include within such plan, parks and recreation facilities to be funded with impact fees to ensure that new parks and recreation facilities, of each park type, at adopted levels of service, are constructed and located in a manner that will benefit new residential development paying the impact fees.

Sec. 23-186. Economic impact determination.

The board of county commissioners determines and finds, pursuant to subsection 30-2(b)(2), that sufficient information has been provided for the board to assess the economic impact of this article, including as amended again in 2023, on the development of real property in the county. The board of county commissioners, therefore, determines and finds that no further economic impact statement or economic impact information is required in this matter. If planning studies and periodic review reveal a detrimental economic impact, this article shall be reviewed and revised accordingly.

Sec. 23-187. Penalty.

Violations of this article may be punished as provided in section 1-9. Additionally, the county may obtain an injunction or other legal or equitable relief in the circuit court against any person or entity violating this article.

Sec. 23-188. Reserved.

Section 2. *Effective date; publishing of notice of increase in impact fees.*

(a) This ordinance shall become effective on May 1, 2023.

(b) Pursuant to Section 163.31801(3)(d), Florida Statutes, on or before January 30, 2023, the Clerk of the Board of County Commissioners shall publish a legal notice in *The Orlando Sentinel* stating that the Board has adopted this ordinance effective May 1, 2023, imposing increased parks and recreation impact fees, with annual indexing of four point one percent (4.1%).

ADOPTED this 10th day of January, 2023.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

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

By: _____
Deputy Clerk