

BCC Mtg. Date: January 9, 2018

EFFECTIVE DATE: May 1, 2018

ORDINANCE NO. 2018-03

**AN ORDINANCE AMENDING THE ORANGE COUNTY
PARKS AND RECREATION IMPACT FEE ORDINANCE
CODIFIED AT ARTICLE VI, CHAPTER 23, OF THE
ORANGE COUNTY CODE; 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 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:

Chapter 23 - IMPACT FEES

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 ~~facilities and equipment~~ 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 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. ~~A mobile home shall not be deemed an 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 shall mean as 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 ~~that, under generally accepted accounting principles for local governments, would be considered a capital expense.~~ 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. ~~Capital improvements must have an expected use life of five (5) years or more.~~ 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 ~~applicable~~ 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 Pplan 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 ~~and or~~ multifamily dwelling units, attached ~~and or~~ detached dwelling ~~units, houses~~unit, house of conventional construction, mobile homes, manufactured homes, modular homes, and ~~all 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 hotels, motels, time-shares, lodginghouse, or recreational vehicle parks.

Impact fee study shall mean the "Orange County Parks and Recreation Impact Fee Update Study" prepared by Tindale-Oliver & Associates Inc., dated ~~January 20, 2012~~ June 7, 2017.

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

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.

Mobile home or manufactured home shall mean a structure transportable in one (1) or more sections, which structure is eight (8) 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 used as a dwelling when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

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 known as the Florida Department of Community Affairs, as applicable to modular housing.

~~*Multifamily* shall mean the primary use of a lot for two (2) or more dwelling units.~~

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

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.

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

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

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

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

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

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

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.

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

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.

Sec. 23-177. Rules of construction.

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

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

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

(c) 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.

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

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

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

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

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

(f) 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.

Sec. 23-178. Findings and declarations.

(a) The board of county commissioners finds that new residential development in the unincorporated area of Orange

County requires additional parks and recreation facilities as operated by the parks and recreation division. It is the policy of the board, as set forth in the comprehensive plan, that such new development should be permitted to occur only where an adequate level of parks and recreation facilities can be provided.

(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 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-delivery level.

(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 ~~and recommendations~~ 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 delivery levels 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 are 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 delivery levels 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: 1.5 acres/1,000 unincorporated population;

(2) Resource-based park: 6.0 acres/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, as 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; adjustments; alternative impact fee calculation; periodic adjustments; time of payment.

(a) *Impact fees.* ~~Subject to subsection (b), the~~ following parks and recreation impact fees with annual indexing at three point seven percent (3.7%), 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)	\$971,711,544	\$1,601	\$1,660	\$1,721	\$1,785
Accessory Dwelling Unit	\$701,991,044	\$1,083	\$1,123	\$1,165	\$1,208
Multi-Family	\$701,991,044	\$1,083	\$1,123	\$1,165	\$1,208
Mobile Homes	\$727,861,150	\$1,193	\$1,237	\$1,283	\$1,330
Retirement Housing/Age Restricted*	\$827	\$858	\$890	\$923	\$957
<i>Annual Index (6)</i>	<i>3.7%</i>	<i>3.7%</i>	<i>3.7%</i>	<i>3.7%</i>	

*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 multiplied by (1+0.037), annual index

(3) Year 2 figures multiplied by (1+0.037), annual index

(4) Year 3 figures multiplied by (1+0.037), 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, the impact fees shall continue at the Year 5 rates until the impact fee schedule is updated.

(6) Source: Table 15 of the Impact Fee Study

(b) — Comparable uses, adjustments.

(1) — If the type of development for which a building permit is applied is not specified on the impact fee schedule set forth in subsection (a), the impact fee assessed shall be the impact fee applicable to the most nearly comparable type of land use on the impact fee schedule. In such a case, the impact fee applicable for the most nearly comparable type of land use may be adjusted to an impact fee that accurately reflects the impacts of such development.

(2) — The person applying for the issuance of a building permit, at that person's option, may submit a study prepared by a professional with impact fee experience, indicating that the impact fees set out in subsection (a) are not appropriate for that person's particular development. Based upon convincing and

~~competent evidence, the impact fee may then be adjusted to the impact fee appropriate for that particular development.~~

(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 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.

(4) The provisions of this section 23-180 shall be 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.

(5) Any agreement proposed by an applicant pursuant to this subsection must be presented to and approved by the BCC prior to the issuance of any certificate of occupancy, temporary or permanent. Any such agreement may provide for execution by mortgagees, lien holders, or contract purchasers in addition to the landowner, and may permit any party to record such agreement in the official records of the county. The BCC shall approve such an agreement only if it finds that the agreement will apportion the burden of expenditure for new facilities in a just and equitable manner, consistent with the principles set forth in *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 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 (Fla. 4th DCA 1984), *cert. denied*, 451 So. 2d 848 (Fla. 1984).

(6) Any applicant or owner who submits a proposed alternative parks and recreation impact fee pursuant to this section and desires the immediate issuance of a building permit 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 county and shall be noted in writing as "paid under protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the county, shall be refunded to the applicant or owner. The county shall not pay interest on the funds paid under protest and subsequently refunded unless interest has been earned on such funds.

(ed) *Periodic adjustments.* This article shall be reviewed by the board of county commissioners at least every five (5) years. The review shall consider changes to the inventory, service delivery, unit costs, value of the assets, and credits based on historical and proposed funding of parks and recreation facilities with non-impact fee revenue. The purpose of this review shall be to analyze the 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.

(de) *Time of payment.*

(1) Except as otherwise permitted by subsection (d)(2) herein or subsection (d)(5), 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. In the case of, 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) The parks and recreation impact fee may be paid prior to the authorization of prepower or issuance of a certificate of occupancy (temporary or otherwise) for a certified affordable housing project, provided that an agreement setting forth the terms and conditions of the discount and deferral of the impact fee has been executed, but no prepower or certificate of occupancy shall be authorized or issued until the impact fee has been paid as provided by subsection (d)(3). 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) For an eligible certified multifamily affordable housing project, the impact fee for the entire project shall be paid when prepower is authorized for the first building or the first certificate of occupancy is issued.~~

(43) In the event the parks and recreation impact fee is not paid prior to the authorization of prepower or 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, ~~a penalty of five (5) percent per month or any portion of a month (not to exceed twenty five (25) percent),~~ the costs of such collection, and a reasonable attorney's' fees; and

b. For an eligible ~~affordable housing~~ project, the ~~builder~~building owner and/or license holder who ~~pulled~~obtained the building permit(s) may be prohibited from ~~pulling~~obtaining any other building permits within the county until

the applicable parks and recreation impact fee (including any costs and fees) has been paid.

~~(5) 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.~~

Sec. 23-181. Presumptions; limitations, agreements and security for review requirements; 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) — *Impact agreement.* In lieu of the payment of impact fees as calculated in section 23-180, or if compliance with one (1) or more sections of this article can be insured only if the nature and scope of the proposed residential development is identified by means other than that provided in subsection (a), any applicant for a building permit may propose to enter into an alternative impact fee agreement with the county designed to establish just and equitable fees or their equivalent and standards for service needs appropriate to the circumstances of the specific development proposed. Such an agreement shall include a study prepared by a professional with impact fee experience and may include, but shall not be limited to provisions which:~~

~~(1) — Modify the presumption of impact set forth in subsection (a) by specifying the nature of the proposed residential development for purposes of computing service needs generated, provided that the agreement shall establish enforceable means for ensuring that the nature of the residential development shall be substantially as agreed.~~

~~(2) — Provide an impact fee that may differ from that set forth in this article, provided that such estimate shall be based on sufficient economic and planning data, in a form acceptable to the board of county commissioners, to demonstrate that a different fee is appropriate.~~

~~(3) — Provide a schedule and method for payment of the impact fees in a manner appropriate to the particular circumstances of the proposed residential development in lieu of the requirements for payment of the impact fees as set forth in section 23-180, provided that the county receive, in a form acceptable to the board of county commissioners, security ensuring payment of the impact fees within ninety (90) days subsequent to the issuance of a building permit, which security may be in the form of a cash bond, surety bond, an irrevocable letter of credit, negotiable certificate of deposit or escrow account, or a lien or mortgage on lands to be covered by the building permit.~~

~~Any agreement proposed by a developer pursuant to this article shall be presented to the board of county commissioners prior to issuance of a building permit. Any such agreement may provide for execution by mortgagees, lienholders or contract purchasers in addition to the landowner, and may permit any party to record such agreement in the official records of the county. The board of county commissioners shall approve such an agreement only if it finds that the agreement will apportion the burden of expenditure for new facilities in a just and equitable manner,~~

consistent with the principles set forth in *Contractors & 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).

~~(d) *Applicability.* The right to exercise any of the options described in subsection (c) shall be done prior to the issuance of the building permit or permits for the proposed development.~~

~~(ec) *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 ~~for~~ 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 ~~parcel-tract~~ (which land value is based on the "date of valuation" as defined in subsection (c)(2)), as determined by an ~~M.A.I. appraiser with an M.A.I. designation, who is acceptable to the county, who was selected and paid for by the applicant, and who 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 ~~administrator or his designee~~ accepts the methodology of the appraisal but disagrees with the appraised value, ~~he-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 ~~parcel-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 ~~both~~ 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-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-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 ~~certificate of occupancy~~building permit for vertical construction.

(e) An applicant is not entitled to use any portion of a credit account granted pursuant to this section ~~by obtaining to obtain~~ a refund for 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.

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

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

~~(h) If an applicant disagrees with a written opinion issued by the county staff pursuant to this section, the applicant may submit a written appeal to the chairman of the Orange County development review committee (DRC). The DRC will review the appeal and may grant the appeal, deny the appeal, or request additional information. A decision of the DRC may be appealed to the board of county commissioners for a public hearing upon payment of a nonrefundable appeal fee as set forth in the current fee schedule. At the public hearing, the board shall consider the relevant data and evidence submitted by the appellant, and the DRC decision. The board shall make a final determination of whether to grant the request, partially grant the request, or deny the request.~~

~~(i) Any impact fee refund must comply with the provisions of Orange County Administrative Regulation No. 4.04.01.~~

Sec. 23-183. Exemptions and discounts.

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

(1a) Any addition or expansion to a residential building which does not increase the number of dwelling units in the building.

(2b) 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 or the primary residential building, which building does not constitute a dwelling unit.

(3c) The replacement of a building or structure with a new building or structure, provided that the original building or structure was located on the site on January 1, 2006, or thereafter, and provided that if the land use of the replacement building or structure is different from the original 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 ~~building official~~Community, Environmental, and Development Services Department, Fiscal and Operational Support Division. When determining the amount of an exemption, the highest and best use that was previously assessed and paid shall be applied, whenever available.

(4d) The expansion of or addition to a structure, provided that such expansion or addition does not require the issuance of a certificate of occupancy.

(5e) County facilities constructed for nonproprietary governmental purposes.

~~(b) — (1) — Notwithstanding that it may have an impact on parks and recreation facilities, any affordable single family residential unit, affordable multifamily unit, or affordable mobile home unit within a project which has received a certificate of affordability from the Orange County Housing and Community Development Division shall be eligible for a discount on the applicable impact fee according to the procedures set forth in Orange County Administrative Regulation No. 4.08, as it may be amended or replaced from time to time.~~

~~(2) — The county shall not increase the amount of the impact fee payable under section 23-180 to replace any revenue lost on account of the discounts granted under this subsection.~~

~~(3) — The board of county commissioners may adopt administrative regulations and guidelines to implement subsection (b)(1) and to ensure that a housing unit that is granted a discount remains affordable.~~

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 administrator, 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 administrator ~~(or his designee)~~ 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 at the rate earned by the county, 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, 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.

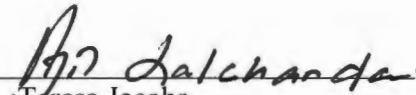
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Section 2. Effective date; publishing of notice of increase in impact fees.

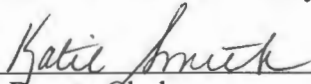
- (a) This ordinance shall become effective on May 1, 2018.
- (b) Pursuant to Section 163.1801(30)(d), Florida Statutes, on or before January 30, 2018, the Clerk of the Board of County Commissioners shall publish a legal notice in *The Orlando Sentinel* stating that the Board has adopted this ordinance effective May 1, 2018, imposing increased parks and recreation impact fees, with annual indexing of three point seven percent (3.7%).

ADOPTED this 9th day of January, 2018.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: 
Teresa Jacobs
Orange County Mayor

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

By: 
Deputy Clerk

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