

ORDINANCE NO. 2016-08

AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA RELATING TO SCHOOL IMPACT FEES AND ASSOCIATED STUDENT GENERATION RATES; AMENDING THE ORANGE COUNTY SCHOOL IMPACT FEE ORDINANCE CODIFIED AT ARTICLE V, CHAPTER 23, OF THE ORANGE COUNTY CODE; AMENDING SECTION 34-155 OF THE ORANGE COUNTY SUBDIVISION REGULATIONS TO REFLECT UPDATED STUDENT GENERATION RATES; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1. The Orange County Code, Chapter 23, Article V, School Impact Fees, is hereby amended in part as set forth in Section 2 below with the new language indicated by underlining and the deleted language being struck through.

Section 2. Orange County Code, Chapter 23, Article V, School Impact Fees, is hereby amended as follows:

**ARTICLE V. SCHOOL IMPACT FEES
DIVISION 1. GENERALLY**

Sec. 23-121. Definitions.

When used in this article, the following terms shall have the following meanings, unless the context otherwise clearly requires:

* * *

Affordable housing shall mean housing as described in Section 23-163 hereof and defined in Orange County Administrative Regulation 4.08.

* * *

Duplex shall mean a building with two (2) dwelling units which has two (2) kitchens and is designed for or occupied exclusively by two (2) families. The units of a duplex must be connected by a common wall.

* * *

Multifamily dwelling unit shall mean a dwelling unit located in a building or a portion of a building (including, but not limited to accessory dwelling units, apartments, ~~townhouses~~ 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, and such dwelling units are customarily offered for rent on a monthly basis, generally for a minimum six-month lease period.

* * *

Quadraplex shall mean a building with four (4) dwelling units which has four (4) kitchens and is designed for or occupied exclusively by four (4) families. Each unit of a quadraplex must be connected by a common wall.

Residential means multifamily dwelling units, mobile homes, townhouses, or single-family detached houses.

* * *

Student housing shall mean any multi-family development or portion thereof where the dwelling units are designed and constructed as three (3) or more bedrooms with three (3) or more bathrooms which is marketed and/or rented to students attending a local college, university, community college, or private school, or any multi-family development or portion thereof comprised of dwelling units consisting of three (3) or more bedrooms and less than three (3) bathrooms where the bedrooms are leased separately.

* * *

Townhouse shall mean a self-contained dwelling which is designed and constructed so that the unit and the lot on which it is located may be individually owned. Townhouse units are separated by fireproof and soundproof walls and are designed to provide privacy.

Triplex shall mean a building with three (3) dwelling units which has three (3) kitchens and is designed for or occupied exclusively by three (3) families. Each unit of a triplex must be connected by a common wall.

~~Workforce housing shall mean multifamily housing, which may include the residential component only of a mixed-use project, located within the unincorporated area of Orange County, forty (40) percent of which is reserved for individuals or families whose annual household income, as adjusted for household size, does not exceed eighty (80) percent of the area median income. Workforce housing shall not include other types of multifamily housing, such as student housing, nursing homes, senior living facilities, or assisted living facilities as described in Section 23-163 hereof and defined in Orange County Administrative Regulation 4.08.~~

Sec. 23-122. Findings.

It is hereby ascertained, determined and declared that:

(1) In ~~2007~~ 2011, at the request of the school board, the board ~~enacted~~ amended a school impact fee ordinance which, prior to the ~~2011~~ 2016 revisions, ~~was reflected~~ school impact fees in the amounts of ~~\$11,829.00~~ \$6,525.00 for single-family houses, ~~\$6,647.00~~ \$3,921.00 for multifamily units (which included townhouses at the time), and ~~\$6,344.00~~ \$4,345.00 for mobile homes. ~~In recognition that land acquisition costs and construction costs were increasing at the time the ordinance was enacted, the ordinance provided for an annual automatic 5% increase for each impact fee, however, the 5% increase scheduled for January 28, 2011 was suspended by ordinance number 2011-01 at the request of the school board.~~

* * *

(5) Section 163.3177, Florida Statutes, requires the county to adopt a comprehensive plan containing a capital improvements element which considers the need and location of public facilities within its areas of jurisdiction and the projected revenue source which will be utilized to fund these facilities. Furthermore, pursuant to section 163.3177, Florida Statutes, in 1997, the board adopted a "public school facilities element" as part of the county's comprehensive ~~policy~~ plan, and goal no. 4 of the element contains policies calling for review and updating of the school impact fee.

* * *

(9) The projected capital improvements to the school system and the allocation of projected costs between those necessary to serve existing development and those required to accommodate the educational needs of future residential construction as presented in the study entitled "Orange County Public Schools School Impact Fee Study Update Study Final Report" dated ~~May 10, 2011~~ February 5, 2016, is hereby approved and adopted by the county, and such study is found to be based on the most recent and localized data and to be consistent with the comprehensive plan of the county and with the requirements of section 163.31801, Florida Statutes.

* * *

(12) The establishment of a school impact fee is consistent with the comprehensive policy plan and is specifically found to serve a county purpose.

* * *

(14) Within a four-year period from the effective date of the ~~2011~~ 2016 revisions to this article, this article will be subject to review pursuant to section 23-167, Orange County Code.

* * *

~~(18) The board enacted ordinance number 2011-04 on May 10, 2011 (with an effective date of May 13, 2011), providing for a temporary twenty five percent (25%) reduction of county impact fees other than school impact fees, and providing for a temporary reduction of school impact fees to the amounts in the schedule set forth herein in section 23-141 (c).~~

* * *

Sec. 23-124. Adoption of impact fee study.

The board hereby adopts and incorporates by reference the study entitled "Orange County Public Schools School Impact Fee Study Update Study Final Report" dated ~~May 10, 2011~~ February 5, 2016.

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DIVISION 2. SCHOOL IMPACT FEES

Sec. 23-141. Imposition.

(a) Except to the extent exempted by general or special law, all residential construction occurring within the county, both within the unincorporated area and within the municipal boundaries of the cities, for which a building permit is issued subsequent to the effective date of this article, shall pay the school impact fee.

(b) Effective from May 16, 2016, until September 30, 2016. ~~All~~ residential construction occurring within the county, for which building permits are issued ~~on and before May 12, 2011,~~ ~~both~~ within the unincorporated area and ~~within~~ the ~~municipal~~ boundaries of the ~~cities~~ various municipalities, shall pay the following school impact fee:

(1) Single-family detached house (per dwelling unit) . . . ~~\$13,041.00~~ 6,525.00

(2) Multifamily dwelling unit and townhouse (per dwelling unit) . . . ~~\$7,328.00~~ 3,921.00

(3) Mobile home (per dwelling unit) . . . ~~\$6,994.00~~ 4,345.00

(c) Effective from October 1, 2016, until December 31, 2016. ~~A~~ all residential construction occurring within the county, for which building permits are issued ~~on and after May 13, 2011,~~ ~~both~~ within the unincorporated area and ~~within~~ the ~~municipal~~ boundaries of the ~~cities~~ various municipalities, shall pay the following school impact fee:

School Impact Fee Schedule

| Land Use Type | Impact Fee |
|-------------------------------|-------------------|
| Single Family Detached | <u>\$6,525.00</u> |
| Multi-family | <u>3,921.00</u> |
| Townhouse | <u>4,345.00</u> |
| Mobile Home | <u>4,345.00</u> |

Effective January 1, 2017, all residential construction occurring within the county, for which building permits are issued within the unincorporated area and the boundaries of the various municipalities, shall pay the following school impact fee:

School Impact Fee Schedule

| Land Use Type | Impact Fee |
|-------------------------------|------------------------|
| Single Family Detached | <u>\$6,5258,784.00</u> |
| Multi-family | <u>3,9215,919.00</u> |
| Townhouse | <u>6,930.00</u> |
| Mobile Home | <u>-4,3456,088.00</u> |

~~(The school impact fee schedule set forth in this subsection (c) was originally temporarily adopted pursuant to Section 5 of ordinance number 2011-04, effective May 13, 2011, and became permanent pursuant to Section 2 of ordinance number 2011-04, effective June 10, 2011.)~~

Sec. 23-142. Payment.

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

Sec. 23-143. Use of monies.

* * *

(f) In the event that a building permit, issued for residential construction, expires or otherwise becomes invalid prior to completion of the residential construction for which it was issued and for which a school impact fee was paid, the applicant may, within one hundred twenty (120) days of the expiration or invalidity of the building permit, apply for a refund of the school impact fee. Failure to timely apply for a refund of the school impact fee shall waive any right to a refund.

(1) The application for refund shall be filed with the local government that issued the subject building

permit, with a copy to the superintendent, and contain the following:

- a. The name and address of the applicant;
- b. The location of the property which was the subject of the building permit;
- c. The date the school impact fee was paid;
- d. A copy of the receipt of payment for the school impact fee; and
- e. The date the building permit was issued and the date of expiration or that it was declared invalid.

(2) After verifying that the building permit has expired or become invalid and that the residential construction has not been completed, the governing entity holding such fee shall refund it. The School Board and one or more municipalities may, by separate agreement, modify the process for issuance of impact fee refunds.

(3) A building permit which is subsequently issued for residential construction on the same property which was the subject of a refund shall pay the school impact fee based on the rate effective as of the date of the subsequently pulled building permit as required herein.

Sec. 23-144. Alternative school impact fee calculation.

(a) In the event an applicant believes that the impact to the school system necessitated by residential construction is less than established in the “Orange County Public Schools School Impact Fee Study Update Study Final Report” dated ~~May 10, 2011~~ February 5, 2016, and ~~adopted by reference in section 23-141, Orange County Code~~, such applicant may, prior to issuance of a building permit for such residential construction, submit a calculation of an alternative school impact fee. Consistent with the Florida case law requirements for a valid school impact fee and the mandate for the provision of a uniform system of free public schools in Article IX, section 1, Florida Constitution, any determination of a lesser impact to the school system created by residential construction under the alternative school impact fee calculation process provided in this subsection shall not be based on the projected or current use of the residential project but shall be based on a consideration that the permanent physical

characteristics or limitations of the specific residential-construction development proposed will generate fewer students initially and during their useful life than the student generation assumptions utilized in the impact fee study.

* * *

(c) The proposed alternative school impact fee shall be submitted to the county which, after consultation with the superintendent and any applicable municipality, shall review the calculations and mail a written determination to the applicant within sixty (60) calendar days of submittal as to whether such calculation complies with the requirements of this section.

(d) If the county, after consultation with the superintendent and any applicable municipality, determines that the data, information and assumptions utilized by the applicant to calculate the alternative school impact fee comply with the requirements of this section and that the calculation of the alternative school impact fee is by a generally accepted methodology, then the applicant may propose to enter into an alternative impact fee agreement with the county designed to establish an alternative school impact fee appropriate to the circumstances of the specific proposed development in lieu of the fee set forth in section 23-141, Orange County Code.

(e) If the county, after consultation with the superintendent and any applicable municipality, determines that the data, information and assumptions utilized by the applicant to calculate the alternative school impact fee do not comply with the requirements of this section, or that the calculation of the alternative school impact fee was not made by a generally accepted methodology, then the alternative school impact fee shall be rejected. Such rejection shall be in writing and set forth the reasons for such rejection, and shall be provided to the applicant by certified mail. The applicant shall have thirty (30) calendar days from the mailing date of the written notification of rejection to request an appeal of the rejection pursuant to the provisions of this subsection.

* * *

(g) Any applicant or owner who submits a proposed alternative school 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 school impact fee pursuant to section 23-141, Orange County Code. Such payment

shall be paid to the county or any applicable municipality 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 or applicable municipality, shall be refunded to the applicant or owner by the governmental entity holding the funds. The county, any applicable municipality, or school board shall not pay interest on the funds paid under protest and subsequently refunded unless interest has been earned on such funds.

DIVISION 3. MISCELLANEOUS PROVISIONS

Sec. 23-161. Exemptions.

The following shall be exempted from payment of the impact fees:

* * *

(7) Student housing.

(8) The construction of 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 500 square feet.

(9) County facilities constructed for nonproprietary governmental purposes.

* * *

Sec. 23-163. Workforce and affordable housing.

Any single-family residential unit, multifamily dwelling unit, ~~or townhouse, or mobile home~~ within a project that has been certified as a workforce or affordable housing development ~~or that has received a certificate of affordability from~~ by the Orange County Housing and Community Development Division or the City of Orlando may be eligible for financial incentives ~~pursuant to Orange County Administrative Regulation 4.08~~ to help offset school impact fees. A housing unit that is granted incentives under this section to help offset school impact fees shall remain affordable.

The terms "workforce housing development," "affordable," "low income," and "very low income," and "workforce housing" shall be as defined in Orange County

Administrative Regulation 4.08, as it may be amended from time to time.

The board shall ~~adopt administrative regulations and guidelines~~ amend Administrative Regulation 4.08 as may be necessary to implement this section and to ensure that a housing unit that is granted incentives by Orange County to help offset school impact fees remains affordable.

* * *

Sec. 23-167. Review requirement.

(a) This article and the impact fee study shall be reviewed by the board, in consultation with the school board and ~~cities~~ municipalities, at least once every four (4) years. The initial and each subsequent review shall consider, but not be limited to, all components of the impact fee study accepted in section 23-124, Orange County Code. Such review shall also include a detailed analysesanalysis of the economic impact of this article sufficient to comply with the requirements of Section 163.31801, Florida Statutes. The purpose of this review is to demonstrate that this impact fee does not exceed reasonably anticipated costs associated with growth-necessitated capital improvements. In the event the review of the article and impact fee study required by this section alters or changes the assumptions, conclusions and findings of the ~~impact fee study accepted by reference in section 23-124~~ “Orange County Public Schools School Impact Fee Study Update Final Report” dated February 5, 2016, then such study shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and the impact fee shall be amended in accordance therewith.

(b) The board hereby establishes a School Impact Fee Advisory ~~Group~~ Committee, the purpose of which will be to recommend a methodology for performing the school impact fee study. Where practicable, such methodology should be consistent with the prior school impact fee. The advisory ~~group~~ committee shall review the school impact fee study, update methodology where necessary to utilize the most accurate and recent local data, and may review the school impact fee ordinance and recommend revisions to it. The advisory ~~group~~ committee will be comprised of seven (7) members: three (3) members selected by the school board and four (4) members selected by the county, one (1) of which will represent the interests of the ~~Home Builders Association of Mid Florida~~ Greater Orlando Builders Association. Meetings will be coordinated and supported by county staff

* * *

Sec. 23-170. ~~Pilot program for deferral of impact fees for workforce housing.~~

~~(a) — *General.* In lieu of the payment of school impact fees at the time of the issuance of building permits, as set forth in Section 23-142, Orange County Code, an applicant for a Workforce Housing project may propose to enter into an agreement with the County to defer the payment of school impact fees as set forth below. The county shall only defer school impact fees if the School Board has agreed, in writing, to the deferral of school impact fees after consideration of the proposed Workforce Housing project. This section is not intended in any way to relieve an applicant of any concurrency requirements that may be applicable to their project, or the requirement that the applicant enter into a Capacity Enhancement Agreement with the School Board, as applicable.~~

~~(b) — *Criteria.* To qualify for the deferral of school impact fees as set forth herein, the Workforce Housing project shall meet the following criteria:~~

~~(1) — The project must be approved as a Workforce Housing project by the Orange County Housing and Community Development Division.~~

~~(2) — The School Board must approve the project and agree to the deferral of school impact fees. In addition to the agreement with the County, as described herein, the School Board, at its discretion, shall pass a resolution or enter into an agreement with the Applicant (which may include an amendment to an existing Capacity Enhancement Agreement) memorializing any additional terms relating to the deferral of school impact fees. In the event the terms of an agreement the School Board enters into with the Applicant conflict with the terms of the agreement that the Applicant enters into with the County, the terms of the County's agreement shall control.~~

~~(3) — The owner or developer (referred to herein as "Applicant") of the project shall enter into an agreement with the County, in a form acceptable to the County, memorializing terms consistent with the following requirements:~~

~~a. — The agreement must be presented to and approved by the Board of County Commissioners prior to the issuance of a building permit. 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), *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). When considering a project for approval, the Board of County Commissioners may consider factors including, but not limited to, the proximity of the project to: a major employer, a major employment center, or mass transit; or whether the project is located in an identified redevelopment area;~~

~~b. — The agreement must be recorded in the official records of Orange County, Florida at the Applicant's expense;~~

~~c. — The agreement shall contain a fifteen (15) year restrictive covenant running with the land imposing the Workforce Housing limitations (i.e. 40% of the units shall be reserved for residents at 80% or less of the area median income);~~

~~d. — The agreement shall sufficiently describe the real property to which the pilot program applies and shall provide that the deferral of impact fees shall not be transferable to other real property; and~~

~~e. — The agreement shall have a termination date fifty four (54) months from the date of issuance of the first building permit for a Workforce Housing project; provided, however, that any obligations on the part of the Applicant that may be outstanding at the end of the 54 month term shall survive the expiration of the agreement.~~

~~(4) — The Applicant must provide security for the repayment of the deferred impact fees as required herein.~~

~~(5) — All deferred impact fees shall be paid in full by the expiration of the agreement, regardless of when the building permit(s) was issued.~~

~~(6) — At least one building permit must be applied for and issued, and construction commenced, within twelve (12) months from the effective date of the agreement.~~

~~(7) — All deferred impact fees shall be payable at the rate in effect when the building permit is issued and shall accrue interest (payable to the County; provided, however, that the School Board shall be entitled to receive the pro rata share of the interest that accrues on the deferred school impact fees) from the date the building permit is issued at a rate equal to the bank prime rate less one quarter (1/4) point (i.e. 25 basis points) (the “Base Rate”). The rate shall be reset on a calendar quarterly basis and shall be capped at a maximum rate of the Base Rate plus four (4) points (i.e. 400 basis points) (the “Maximum Rate”).~~

~~(8) — The project shall have a minimum of 100 dwelling units and a maximum of 400 dwelling units.~~

~~(9) — The project shall be located within the Urban Service Area.~~

~~(10) — Workforce Housing pilot projects shall be limited to one per County Commission District and shall be considered and approved on a “first come, first served” basis.~~

~~(11) — Applications for deferral of impact fees for Workforce Housing pursuant to this pilot program shall be submitted to the County not later than July 1, 2011.~~

~~(c) — *Security.* In order to secure the payment of the deferred impact fees, the Applicant shall, at the sole discretion of the Board of County Commissioners provide security for the deferment. Security shall be in an amount sufficient to cover all deferred impact fees (including school impact fees, if applicable) and all deferred utilities capital charges. The security shall include an amount of estimated interest, calculated based upon the Maximum Rate, to be accrued over the life of the deferral from the date of the issuance of the first building permit until the termination date of the agreement. In addition to the security, a lien in favor of Orange County on the subject property, which shall be subordinate to any construction financing for the project, shall be placed on the property. The security provided may consist of one or more of the following:~~

~~(1) — An irrevocable, demand draw, standby letter of credit, in form acceptable to the County.~~

a. ~~The letter of credit shall be drawn on a bank acceptable to the County with a rating of "A" or better as determined by two of the top three nationally recognized credit rating agencies. If the rating of the letter of credit bank falls below an "A", the Applicant shall replace the letter of credit with a conforming letter of credit upon thirty (30) days notice from the County;~~

b. ~~The letter of credit bank shall be a Florida Qualified Public Depository, pursuant to Chapter 290, Florida Statutes. If the letter of credit bank loses its status as a Florida Qualified Public Depository, the Applicant shall replace the letter of credit with a conforming letter of credit upon thirty (30) days notice from the County;~~

c. ~~The letter of credit bank must have an office or branch within the tri-county area (Orange, Osceola, Seminole) where the letter of credit can be drawn upon; and~~

d. ~~The letter of credit must contain default/draw provisions acceptable to the County;~~

(2) ~~US Treasury securities acceptable in type and term to the County to be transferred to the County as collateral for the deferred impact fees;~~

(d) ~~Opinion letters. In addition to the security to be provided as outlined above, the County shall receive an opinion from a qualified bankruptcy attorney indicating that the County would be protected under whatever security is provided in the event the Applicant files for bankruptcy. The opinion shall come from an attorney or law firm selected by the County and paid for by the Applicant. Following the first approved Workforce Housing project, the County may choose to receive a new opinion or have the original opinion updated;~~

(e) ~~Sunset. Except for applications for projects submitted before July 1, 2011 this pilot program shall sunset on July 1, 2011 without further action by the Board of County Commissioners;~~

* * *

Section 3. Public school sites. Orange County Code, Chapter 34, Article V, Section 34-155, Design Standards, Public Sites and Open Spaces is hereby amended as follows:

ARTICLE V. DESIGN STANDARDS

DIVISION 1. GENERAL

Sec. 34-155. Public sites and open spaces

* * *

(b) *Public school sites.* In proposed subdivisions as defined in subparagraph (1) below, public school sites shall be designated on the preliminary subdivision plan prior to acceptance of such plan. Where reservation of school sites is determined, an executed deed or the required reservation and maintenance agreement, as noted in subparagraph (2) shall be approved by the board of county commissioners.

(1) Multiplier of students per dwelling unit. The school age population shall be determined based on the following rate:

| | |
|---------------|-------------------------------|
| Single-Family | 0.431 <u>0.417</u> |
| Multi-family | 0.259 <u>0.281</u> |
| Townhouse | <u>0.329</u> |
| Mobile Home | 0.287 <u>0.289</u> |

* * *

In all other respects, section 34-155 shall remain unchanged.

Section 4. On or before May 16, 2016, the Community, Environmental, and Development Services Department shall post notice in the Building Safety Division, and in the appropriate location on the County website, stating that the Board has adopted this Ordinance imposing new and increased school impact fees, effective October 1, 2016.

Section 5. This ordinance shall take effect on May 16, 2016.

ENACTED THIS 10th DAY OF MAY, 2016.

**ORANGE COUNTY, FLORIDA
By: Board of County Commissioners**

By: _____
Teresa Jacobs
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk