

ORDINANCE NO. 9639-23

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, AMENDING THE COMMUNITY DEVELOPMENT CODE BY REPLACING CHAPTER 54 IN ITS ENTIRETY WITH A REVISED CHAPTER 54; CREATING A NEW PARKS AND RECREATION FACILITIES IMPACT FEE; PROVIDING FOR SECTION 54.01 PURPOSE; SECTION 54.02 DEFINITIONS; SECTION 54.03 APPLICABILITY; SECTION 54.04 CALCULATION OF IMPACT FEES; SECTION 54.05 METHOD AND TIMING OF PAYMENT; SECTION 54.06 USE OF FUNDS; SECTIONS 54.21 – 54.25 RESERVED; SECTIONS 54.51 – 54.55 RESERVED; APPENDIX A, ARTICLE XV.; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 54 of the Community Development Code established the Recreation and Open Space Land Dedication;

WHEREAS, Chapter 54 has not been updated, revised, or amended since 2008. The methodology and calculation of the fees contained in the Recreation and Open Space Dedication have not been updated since 1983;

WHEREAS, Tindale Oliver (now Benesch), who was retained by the City of Clearwater ("City"), completed the Parks and Recreation Facilities Impact Fee Study ("Study"), dated May 23, 2022. This Study sets forth the calculation methodology and data by which the City establishes the creation of a new Parks and Recreation Facilities Impact Fee;

WHEREAS, the calculation of this Parks and Recreation Facilities Impact Fee is based on the most recent and localized data;

WHEREAS, the accounting and reporting of this Parks and Recreation Facilities Impact Fee collections and expenditures will be maintained in a separate accounting fund, and those funds will be specifically earmarked for the use in acquiring, constructing, or improving public facilities to benefit new users;

WHEREAS, this Park and Recreation Facilities Impact Fee is proportional and reasonably connected to the need for additional public facilities and the increased impact generated by new residential development;

WHEREAS, this Parks and Recreation Facilities Impact Fee is proportional and reasonably connected to the expenditures of funds collected and the benefits accruing to new residential development;

WHEREAS, this Ordinance is consistent with the City's comprehensive plan and is in the best interest of the public health, safety, and welfare; and

WHEREAS, the City Council determines that the adoption of this Ordinance to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT:

Section 1: Chapter 54 of the Community Development Code is amended as follows:

CHAPTER 54 PARKS AND RECREATION FACILITIES IMPACT FEE

Sec. 54.01. Purpose.

- (1) The city council recognizes that growth and development in the city requires that parks and recreation facilities be expanded to maintain adequate levels of service.
- (2) The city has completed a parks and recreation facilities impact fee study which updates the type, amount, and cost of projected parks and recreation improvements needed to serve new growth and development.
- (3) This chapter is to ensure that new growth and development provides for a proportionate fair share of the costs of parks and recreation facilities needed to serve that new growth and development.
- (4) This new park and recreation facilities impact fee is proportional and reasonably connected to the need for additional public facilities and the increased impact generated by new residential development.
- (5) This new parks and recreation facilities impact fee is proportional and reasonably connected to the expenditures of funds collected and the benefits accruing to new residential development.
- (6) This chapter is consistent with the city's comprehensive plan and is in the best interest of the public health, safety, and welfare.
- (7) The city has determined that it is in the best economic interests of the citizens of the city that certain forms of development be exempt from the requirements of payment of the impact fees contained in this chapter.

- (8) The city hereby adopts and incorporates by reference, the 'City of Clearwater Parks and Recreation Facilities Impact Fee Study' prepared by Benesch dated May 23, 2022, which sets forth the calculation methodology and data by which the city establishes the creation of this parks and recreation facilities impact fee.

Sec. 54.02. Definitions.

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

Age restricted housing means those housing facilities or communities that are (1) specifically designated and operated to assist elderly person under a state or federal program; (2) intended for, and solely occupied by, persons 62 years of age or older; or (3) intended and operated for occupancy by persons 55 years of age or older and at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older and provide a prohibition against residents 18 years of age or younger in the recorded governing documents.

Impact fee account means a separate account established by the city for the purpose of specifically earmarking funds collected under this parks and recreation facilities impact fee.

Open space land means city-owned land established and maintained primarily to provide vegetated breaks or vistas in the urban development pattern. Such properties may be maintained in an essentially natural landform or be given a landscape treatment with the planting of trees, shrubs, and grass, as well as other appurtenant improvements such as, but not necessarily limited to, sidewalks, benches, and park lights.

Parks and recreation facilities project means and includes the acquisition of open space land and construction of recreation facilities and improvements consistent with the city's comprehensive plan and which increases the capacity of the city's park system. This term includes the capital costs associated with the construction, reconstruction, or improvements of facilities that have a life expectancy of at least 5 years; design, engineering, and permitting costs; and other related construction costs required to bring the facilities into service. The cost of repair and maintenance is excluded from this term.

Recreation facilities means buildings, equipment, and landscape features necessary to provide for recreation activities, including but not limited to playgrounds, picnic benches, baseball and softball diamonds, gymnasias, soccer fields, recreation centers, swimming pools, and courts for basketball, horseshoes, lawn bowling, shuffleboard, and

tennis, as well as parking, restrooms, and other appurtenant improvements. This term includes the city-owned land upon which the facilities are located.

Residential development includes all single-family, duplex, triplex, multiple-family, mobile homes, and age restricted housing uses.

Study means the 'City of Clearwater Parks and Recreation Facilities Impact Fee Study' prepared by Benesch dated May 23, 2022.

54.03. Applicability.

- (1) It is the intent that the provisions of this chapter be applied to new residential development proposed to be added within the corporate limits of the city, whether the result of new construction or annexations of developed property.
- (2) The following types of development shall be exempt from the parks and recreation facilities impact fee:
 - (a) The alteration or expansion of an existing dwelling unit where no additional units are created, and the use is not changed.
 - (b) The construction of accessory buildings or structures which will not increase the number of dwelling units on the land.
 - (c) The replacement of a destroyed, demolished, or partially destroyed residential unit where no additional units are created, and the use is not changed.
 - (d) Any annexation or construction of single-family affordable housing dwelling units.
 - (e) Any annexation of a residential development, whether single-family, duplex, triplex, multiple-family, mobile homes, or age restricted housing, of seven units or less.
- (3) This chapter shall not affect, in any manner, the permissible use of property, density or intensity of development, design and improvement standards, or other applicable standards or requirements of this code.

Sec. 54.04. Calculation of impact fees.

- (1) The parks and recreation facilities impact fee imposed for all building permit applications submitted to and accepted by the city on or after September 1, 2023, for residential development uses are set forth in Appendix A, Article XV. of this code.

- (2) Any applicant who has applied for and is in the process of obtaining city development approvals or building permits and has not paid the recreation and open space dedication prior to September 1, 2023 shall have the option to have the fee calculated in accordance with the recreation and open space dedication or this new parks and recreation facilities impact fee, whichever is more cost effective for the applicant. The option to have the fee calculated in accordance with the recreation and open space dedication or this new parks and recreation facilities impact fee shall also apply to applicants with city-approved development agreements executed prior to the effective date of this ordinance.
- (3) Construction of multi-family affordable housing dwelling units will receive a 50 percent reduction per dwelling unit. Annexations of multi-family affordable housing developments of eight units or more will receive a 50 percent reduction per dwelling unit. This reduction is reflected and set forth in Appendix A, Article XV., subsection e.
- (4) A building permit applicant will receive a unit-for-unit impact fee credit for any existing or previously removed dwelling unit(s) on the subject property. Validation and verification of the existing or previously removed dwelling unit is required by the applicant.

Sec. 54.05. Method and timing of payment.

- (1) Payment of the parks and recreation facilities impact fee shall be made by certified check, cashier's check, or any other form acceptable to the city attorney.
- (2) *Building permit.* Payment of the parks and recreation facilities impact fees shall be due and payable to the city prior to the issuance of the certificate of occupancy.
- (3) *Annexation.* Payment of the parks and recreation facilities impact fees shall be due and payable to the city prior to the second reading of the ordinance effectuating the annexation.
- (4) The payment of impact fees shall not entitle the applicant to a building permit or final certificate of occupancy unless all other applicable land use, land development, zoning, planning, building, concurrency, and other applicable requirements, standards, and conditions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of impact fees required by this chapter.

Sec. 54.06. Use of funds.

- (1) An impact fee account shall be established to serve as the depository of funds received as parks and recreation facilities impact fees.
- (2) Impact fee expenditures for parks and recreation facilities projects shall be included in the annual capital budget of the city, or as may be approved by the city council.
- (3) Expenditure of such funds shall be made in a timely manner.
- (4) Funds may be expended at any location in the city when used for a parks and recreation facility project.

Sec. 54.21 – Sec. 54.25. Reserved.

Sec. 54.51 – Sec. 54.55. Reserved.

APPENDIX A – SCHEDULE OF FEES, RATES AND CHARGES

XV. Parks and Recreation Facilities Impact Fee:

Fee per unit shall be as follows:

(a) <u>Single Family (detached) Less than 1,500 sf</u>	<u>\$3,021.00</u>
(b) <u>Single Family (detached) 1,500 sf to 2,499 sf</u>	<u>\$3,358.00</u>
(c) <u>Single Family (detached) 2,500 sf or greater</u>	<u>\$3,762.00</u>
(d) <u>Multi-Family (including duplex and triplex)</u>	<u>\$2,024.00</u>
(e) <u>Affordable Multi-Family (including duplex and triplex)</u>	<u>\$1,012.00</u>
(f) <u>Mobile Home</u>	<u>\$1,847.00</u>
(g) <u>Age Restricted Housing (detached)*</u>	<u>\$2,576.00</u>
(h) <u>Age Restricted Housing (attached)*</u>	<u>\$1,551.00</u>

*Does not include Mobile Home Parks

CHAPTER 54 RECREATION AND OPEN SPACE DEDICATION

ARTICLE I. IN GENERAL

Sec. 54.01. Definitions.

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

~~*Expansion* means the addition of eight or more dwelling units to a residential property. For the purposes of this chapter, the term also includes the addition of 50 percent or more to the floor area of a nonresidential building located on one acre or more of land.~~

~~*Land value* means, for undeveloped properties, either the most recent sales price or the just value for the land without any agricultural exemption according to the current year's property assessment records of the county property appraiser, whichever is greater. For developed properties, the term means the just value for the land without any agricultural exemption according to the current year's property assessment records of the county property appraiser.~~

~~*Open space land* means city-owned property established and maintained primarily to provide vegetated breaks or vistas in the urban development pattern. The term includes property acquired by the city with open space funds for use as open space land. Such properties may be maintained in an essentially natural landform or be given a landscape treatment with the planting of trees, shrubs and grass, as well as other appurtenant improvements such as, but not necessarily limited to, sidewalks, benches and park lights. Open space land may adjoin recreation facilities land in the same park.~~

~~*Recreation facilities* means buildings, equipment and landscape features necessary to provide for recreation activities, including but not limited to playgrounds, picnic benches, baseball and softball diamonds, gymnasias, soccer fields, recreation centers, swimming pools, and courts for basketball, horseshoes, lawn bowling, shuffleboard and tennis, as well as parking, restrooms and other appurtenant improvements.~~

~~*Recreation facilities land* means city-owned property upon which recreation facilities are located. The term includes property acquired by the city with recreation facilities land funds for the development of recreation facilities. Recreation facilities land may adjoin open space land in the same park.~~

~~*Redevelopment* means demolition or partial demolition of buildings or structures and replacement with new buildings or structures.~~

~~*Residential development* includes all single-family, mobile home, duplex, triplex and multiple-family dwellings, hotels/motels and interval ownership/timesharing units. The term does not include nursing homes, adult congregate living facilities, assisted living facilities, halfway houses, group homes, or residential shelters. The dwelling unit equivalent of a hotel/motel or interval ownership/timesharing unit shall be calculated as follows:~~

- ~~(1) Four hotel/motel rooms equal one dwelling unit equivalent;~~

~~(2) One interval ownership/timeshare unit equals one dwelling unit equivalent.~~

~~Resource-based recreation area means open space land of citywide significance, as determined by the city commission. The term includes, but is not necessarily limited to, bodies of water, wetlands, forests and scenic views. Resource-based recreation area land may be left in its natural state or improved with grass and landscaping, sidewalks, pedestrian trails, boardwalks, fishing piers and docks, canoe trails, bicycle trails, benches, park lights and other improvements appurtenant to the primary use of enjoyment of the land's natural resources by the public. The land may not be improved with parking lots, concession stands, restaurants or other similar improvements.~~

~~Sec. 54.02. Transition rules.~~

~~For applications pending on the effective date of this ordinance, any fee not previously paid shall be due on July 23, 2001.~~

ARTICLE II. RECREATION LAND AND FACILITIES

~~Sec. 54.21. Purpose of article.~~

~~The purpose of this article is to enable the city commission to implement the objectives and policies of the recreation and open space element of the city comprehensive plan.~~

~~Sec. 54.22. Applicability of article; exemptions from article.~~

~~(1) It is the intent that the provisions of this article be applied to residential development proposed to be added to the building stock within the corporate limits of the city, whether the result of new construction within the corporate limits or annexation of developed property, according to the following:~~

~~(a) All new residential development of eight dwelling units or more shall comply with all applicable provisions of this article.~~

~~(b) All annexations of residential dwellings of eight dwelling units or more shall comply with all applicable provisions of this article.~~

~~(c) All expansion of existing residential development which will add eight or more dwelling units shall comply with all applicable provisions of this article.~~

~~(d) All residential redevelopment which will result in a net increase of eight or more dwelling units shall comply with all applicable provisions of this article.~~

~~(2) The following levels of development shall be considered exempt from the recreation land impact fee provisions of section 54.23(1)(a). Unless otherwise indicated, the following levels of development shall be subject to the recreation facilities impact fee as required by section 54.23(1)(b):~~

~~(a) All new residential developments of fewer than eight units;~~

- ~~(b) All annexation of residential developments of fewer than eight units shall be considered to be exempt from the recreation facilities impact fee as required by section 54.23 (1)(b);~~
 - ~~(c) All expansion of existing residential development of fewer than eight units;~~
 - ~~(d) All residential redevelopment which results in a net increase of fewer than eight dwelling units.~~
- ~~(3) Exceptions to subsections (1) and (2) of this section are hereby granted pursuant to the following conditions:~~
- ~~(a) Any parcel which has previously met the city's land dedication requirements under the previously established terms of annexation shall not be subject to an additional dedication requirement, provided development intensity does not exceed the level established by zoning or specifically authorized by site plan or subdivision plat approval at the time of land dedication or payment in lieu thereof. Should the applicant seek to increase the intensity of use, the city reserves the right to impose an additional fee, the amount of which is the difference between the previous dedication and the dedication amount which is determined according to the provisions of this article for the portion of the project which is proposed to be expanded.~~
 - ~~(b) Any property which was the subject of an agreement to annex executed prior to the effective date of this article is exempt from the provisions of this article.~~
 - ~~(c) Any preexisting agreements to provide open space, park or recreation land established through site plan, subdivision plat or annexation procedures shall be honored by both the city and the affected private party.~~
 - ~~(d) Development, redevelopment or expansion of properties located within the downtown redevelopment area, designated as the Community Redevelopment Area in Resolution 02-41, approved by the city commission on August 8, 2002, shall be exempt from the provisions of this article.~~

Sec. 54.23. Fees—Determination of amount.

- ~~(1) The amount of recreation land and development impact fees shall be based, to the extent possible, upon the intensity of the proposed development and the findings contained in the open space and recreation study prepared by the city, which provides the inventory information and methodology used to develop the following fee schedule:~~
 - ~~(a) To provide land on which recreation facilities may be built to service additional population consistent with the level of service prevailing in the city, all applicable residential developments shall be assessed a recreation land impact fee as set forth in appendix A to this Code.~~
 - ~~(b) To provide capital facilities to service additional population consistent with the level of service prevailing in the city, all applicable residential developments shall be assessed a recreation facilities impact fee as set out in appendix A to this Code.~~

- ~~(2) When the dedication requirements set forth in subsection (1)(a) of this section would require the dedication of more than six percent of the net residential area of any parcel or plat, the applicant shall receive a credit if private recreation facilities are provided for the use of residents of the proposed development. Such private recreation facilities shall include but not be limited to swimming pools, tennis courts, handball courts, racquetball courts, volleyball courts, playgrounds, picnic areas, fitness trails and the like. The amount of such credit shall be the difference between the recreation land impact fee computed according to the provisions of subsection (1)(a) of this section and six percent of the net residential area of the parcel or plat.~~
- ~~(3) The city manager or the manager's designee, with the advice and recommendation of the parks and recreation director, shall determine whether the recreation land impact fee shall be satisfied by a land dedication, money payment, or a combination thereof. In making this determination, the city manager and parks and recreation director shall use as a basis the following criteria:~~
- ~~(a) Suitability of land for recreation usage;~~
 - ~~(b) Amount of land to be dedicated;~~
 - ~~(c) Presence or absence and location of other recreation resources in the area;~~
 - ~~(d) Planned recreation needs, as documented in the comprehensive plan;~~
 - ~~(e) Ability to maintain recreation lands in a cost effective manner.~~

~~Sec. 54.24. Same—Method and timing of payment.~~

- ~~(1) The transfer of land in satisfaction of the provisions of section 54.23 shall be in fee simple, permanent recreation easement, or any other equivalent conveyance which would have the effect of providing the benefits of recreation land in perpetuity to the residents and visitors of the city to the satisfaction of the city attorney.~~
- ~~(2) Payment of moneys in satisfaction of the provisions of section 54.23 shall be made by certified check, cashier's check or other form acceptable to the city attorney.~~
- ~~(3) Conveyance of any deed, easement or other transfer of interest and any monetary payment for recreation facilities and in lieu of land dedication shall be in a form acceptable to the city attorney and according to the following schedule:~~
- ~~(a) *Annexation:* Prior to second reading of the ordinance effectuating annexation. If the property is vacant or developed with less than eight units and is proposed to be developed or redeveloped with eight or more units, the fee shall be due in conjunction with the subdivision plat or site plan.~~
 - ~~(b) *Subdivision plat:* Prior to city approval and signature of the final or record plat.~~
 - ~~(c) *Site plan:* Prior to the issuance of the initial building permit for any residential dwelling on the property. If the development order authorizes phased development and clearly delineated phase lines are displayed on the approved plan, then any conveyance shall occur prior to the issuance of the initial building permit for the first phase and any monetary payment corresponding to~~

~~a phase shall be due prior to issuance of the initial building permit for such phase.~~

- ~~(4) The city may, as a service to developers, estimate fees at any time prior to final development approval. The actual fee, however, shall be determined at the time the fee is due according to the schedule set forth in paragraph (3) above.~~

~~Sec. 54.25. Use of moneys and land.~~

- ~~(1) Nonrevocable trust funds shall be established to serve as depositories for moneys received as recreation land impact fees and recreation facilities impact fees. Programming of fund expenditures shall be included in the annual capital budget of the city, or as may otherwise be approved by the city commission following a public hearing. Expenditures of such funds shall be made in a timely manner. Funds shall be expended to benefit the areas in which they were collected. The standard for expenditure of funds shall be as set forth in policies 24.2.2.2 and 24.2.2.3 of the comprehensive plan of the city, which state:~~

~~(a) Recreation facilities land funds shall be expended within a two-mile radius when used for the acquisition of community park land, within a one-mile radius when used for the acquisition of neighborhood or mini-park parkland, or at any location in the city when used for the acquisition of park land to be used for the development of a special facility site when the site is based on a recreational facility that is deemed to provide citywide service.~~

~~(b) Recreation facilities funds shall be expended within a two-mile radius when used for facilities placed in a community park, within a one-mile radius when used for facilities placed in a neighborhood or mini-park, or at any location in the city when used for a facility which serves as the basis for the development of a special facility site providing citywide service.~~

~~Where practical difficulties such as extent or nature of surrounding development, soil or water conditions, or political boundaries preclude meeting precisely these standards, the city reserves the right to substitute nearby facilities in a manner consistent with the service delivery program outlined in the parks and recreation element of the comprehensive plan.~~

- ~~(2) Lands and interests acquired pursuant to the provisions of this article shall be dedicated for public recreation purposes and shall be managed in a manner consistent with the objectives and intent of this article.~~

ARTICLE III. OPEN SPACE LAND

~~Sec. 54.51. Purpose of article.~~

~~The purpose of this article is to enable the city commission to implement the objectives and policies of the recreation and open space element of the city comprehensive plan.~~

Sec. 54.52. Applicability of article; exemptions from article.

- (1) ~~The provisions of this article shall apply to the addition to the building stock within the corporate limits of the city, whether as a result of new construction within the corporate limits or new construction subsequent to filing a petition for annexation, as follows:~~
- ~~(a) All new residential development, whether single family, duplex, triplex, multifamily or mobile home, of eight units or more;~~
 - ~~(b) All new nonresidential development involving land of one acre or more in size;~~
 - ~~(c) All new construction commenced after the filing of a petition for annexation, regardless of the date of application for or issuance of a building permit, if the project would be subject to the assessment if constructed on land already within the corporate limits of the city;~~
 - ~~(d) All expansion of existing residential development, whether single family, duplex, triplex, multifamily or mobile home, which will result in the addition of eight or more units;~~
 - ~~(e) All expansion of existing nonresidential development on property one acre or more in area which will result in an increase to the current floor area of 50 percent or more;~~
 - ~~(f) All redevelopment of existing residential development which will result in a net increase of eight or more residential dwelling units;~~
 - ~~(g) All redevelopment of existing nonresidential development which will result in a net increase of eight or more residential dwelling units and 50 percent or more floor area;~~
 - ~~(h) All redevelopment of existing residential development to nonresidential development on property one acre or more in area which will result in a net increase of 50 percent or more floor area.~~
- (2) ~~Exceptions to subsection (1) of this section are hereby granted under the following conditions:~~
- ~~(a) Any parcel which has previously met the city's land dedication requirements under the previously established terms of annexation shall not be subject to an additional dedication requirement, provided development intensity does not exceed the level established by zoning or specifically authorized by site plan or subdivision plat approval at the time of land dedication or payment in lieu thereof. Should the applicant seek to increase the intensity of use, the city shall impose an additional fee, the amount of which is the difference between the previous dedication and the dedication amount which is determined according to the provisions of this article for the portion of the project which is proposed to be expanded.~~
 - ~~(b) Any property which was the subject of an agreement to annex executed prior to July 7, 1983, the effective date of this article, is exempt from the provisions of this article.~~

- ~~(c) Any preexisting agreements to provide open space, park or recreation land, established through site plan, subdivision plat or annexation procedures, shall be honored by both the city and the affected private parties.~~
- ~~(d) Development, redevelopment or expansion of properties located within the downtown redevelopment area, designated as the Community Redevelopment Area in Resolution 02-41, approved by the city commission on August 8, 2002, shall be exempt from the provisions of this article.~~

Sec. 54.53. Fees—Determination of amount.

- ~~(1) The amount of the open space impact fee to be assessed is established based on the ratio between public open space and developed land within the city. The inventory information and methodology are outlined in the open space and recreation study prepared in support of this article.~~
- ~~(2) All new development and annexation, if applicable, shall be assessed an open space land impact fee as set out in appendix A to this Code. For the expansion of existing projects, the open space land impact fee shall be as set out in appendix A to this Code.~~
- ~~(3) The city manager or the manager's designee, with the advice and recommendation of the parks and recreation director, shall determine whether the open space impact fee shall be satisfied by a land dedication, money payment, or a combination thereof. In making this determination, the city manager and parks and recreation director shall use as a basis the following criteria:
 - ~~(a) Preservation of environmentally sensitive areas;~~
 - ~~(b) Amount of land to be dedicated;~~
 - ~~(c) Presence or absence and location of other open space resources in the area;~~
 - ~~(d) Planned open space needs, as documented in the comprehensive plan;~~
 - ~~(e) Ability to maintain open space lands in a cost effective manner.~~~~

Sec. 54.54. Same—Method and timing of payment.

- ~~(1) The transfer of land in satisfaction of the provisions of section 54.53 shall be by deed conveying title in fee simple, permanent open space easement, or any other equivalent conveyance which would have the effect of providing the benefits of recreation land in perpetuity to the residents and visitors of the city to the satisfaction of the city attorney.~~
- ~~(2) Payment of moneys in satisfaction of the provisions of section 54.53 shall be made by certified check, cashier's check or cash.~~
- ~~(3) Conveyance of title, easement or other transfer of interest and any monetary payment in lieu of land dedication shall be according to the following schedule:
 - ~~(a) *New construction subsequent to annexation petition:* Prior to second reading of the ordinance effectuating annexation.~~
 - ~~(b) *Subdivision plat:* Prior to city approval and signature of the final or record plat.~~~~

~~(c) *Site plan:* Prior to the issuance of the initial building permit for any residential dwelling or nonresidential structure on the property. If the development order authorizes phased development, with clearly delineated phase lines displayed on the approved plan, then any conveyance shall occur prior to the issuance of the initial building permit for the first phase and any monetary payment corresponding to a phase shall be due prior to the issuance of the initial building permit for such phase.~~

Sec. 54.55. Use of moneys and land.

- ~~(1) A nonrevocable trust fund shall be established to serve as a depository for moneys received as open space impact fees. Programming of fund expenditures shall be included in the annual capital budget of the city, or as may otherwise be approved by the city commission following a public hearing. Expenditures of such funds shall be made in a timely manner. Funds shall be expended to purchase fee simple interests, open space easements or equivalent less than fee interests to secure open space to benefit the owners of the assessed properties. Funds shall be expended in accordance with policy 24.2.2.1 of the comprehensive plan of the city, which states that open space funds shall be expended within a two-mile radius when used for the acquisition of community parkland, within a one-mile radius when used for the acquisition of neighborhood or mini-park parkland, or at any location in the city when used for the acquisition of park land to be used for the development of a resource-based recreation area. Where practical difficulties such as extent or nature of surrounding development, soil or water conditions, or political boundaries preclude meeting precisely these standards, the city reserves the right to substitute nearby facilities in a manner consistent with the service delivery program outlined in the parks and recreation element of the comprehensive plan.~~
- ~~(2) Lands and interests acquired pursuant to the provisions of this article shall be dedicated for public open space purposes and shall be managed in a manner consistent with the objectives and intent of this article.~~

Coding: Words in ~~strikeout~~ type are deletions from existing text.
Words in underline type are additions.

Section 2: Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 3: This Ordinance shall become effective 90 days after the second reading and adoption by City Council or September 1, 2023, whichever is later.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

Frank Hibbard
Mayor

Approved as to form:

Attest:

Owen Kohler
Lead Assistant City Attorney

Rosemarie Call
City Clerk