

ORDINANCE 2023-25

AN ORDINANCE OF THE CITY OF LAKE WALES, FLORIDA; AMENDING THE CODE OF ORDINANCES OF THE CITY OF LAKE WALES, FLORIDA; PROVIDING RECITALS CONSTITUTING LEGISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 23, ARTICLE VII, DIVISION 4, “PUBLIC FACILITIES IMPACT FEES”; AMENDING SECTION 23-761 RELATING TO DEFINITIONS; AMENDING SECTION 23-762 RELATING TO FINDINGS AND INTENT; AMENDING SECTION 23-767 RELATING TO EXEMPTIONS; AMENDING SECTION 23-770 RELATING TO DEVELOPER CONTRIBUTION CREDIT; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, Section 163.3202(3), Florida Statutes, encourages the use of innovative land development regulations, including the creation of incentive and inclusionary zoning, to implement the goals, objectives and policies of a municipalities Comprehensive Plan: and,

WHEREAS, Section 163.3180(5)(f), Florida Statutes, encourages local governments (including municipalities such as the City) to develop tools and techniques including reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing; and,

WHEREAS, Section 163.31801, Florida Statutes, authorizes local governments to adopt impact fees; and,

WHEREAS, the City is experiencing residential growth that necessitates the need for economic development incentives to include an Economic Development Impact Fee Mitigation; and,

WHEREAS, the City, in its Comprehensive Plan sets out goals, objectives and policies to provide for orderly growth and development; and,

WHEREAS, the City, in its Comprehensive Plan sets out goals, objectives and policies to expand, enhance, and diversify the City’s traditional economic base; and,

WHEREAS, the City Commission of the City (the “City Commission”) finds that this Ordinance supports and furthers the goals, objectives and policies of the Future Land Use Element of the Comprehensive Plan as follows:

- GOAL I.1. “it shall be the goal of the City of Lake Wales to provide a system for orderly growth and development to ensure that the character, magnitude, and location of all land uses fosters a high quality of life that balances a natural, physical, social, and economic environment that meets the needs of the present and future population;
- Objective I.1.5 “Desired Urban Growth Pattern;
- Policy I.1.5.3. “Promote infill development and redevelopment of urban areas through flexible land use regulations and quick turn-around times for reuse inspections and permit reviews, and financial incentives such as

development impact fee exemptions for desirable uses. Land use regulations for redevelopment target areas shall promote affordable housing and make liberal use of the special permit process to allow a wide range of uses without compromising neighborhood integrity and land use compatibility.

WHEREAS, the City Commission has determined that this Ordinance supports and furthers the goals, objectives and policies of the Economic Development Element of the Comprehensive Plan as follows:

- GOAL XI.1. “The City of Lake Wales shall be committed to the promotion of a business climate that will aid in economic diversification, resultant stability, prudent use of existing resources and expanded tax base. Lake Wales will also take actions to ensure maximum employment opportunity for its people while protecting its sensitive natural environment, thus maintaining quality of life at a high level.”
- Objective XI.1.1 “Economic Base Maintenance;”
- Policy XI.1.1.4. “The EDC shall work with the City’s Community Redevelopment Agency (CRA) and Lake Wales Main Street to promote the redevelopment of existing residential, commercial and industrial properties within the Lake Wales area and evaluate establishing monetary incentives to facility development.
- Objective XI.1.2 “Economic Base Diversification”
- Policy XI.1.2.8 “Lake Wales through a cooperative effort between the Chamber and City support groups shall develop a strategy for the City to provide financial, in-kind, or other incentive required to assist in the recruitment of new industry.”

WHEREAS, the City has determined that the enactment of this Ordinance adopting an Economic Development Impact Fee Mitigation to encourage economic development within the City and to create permanent employment expansion opportunities for Lake Wales citizens; and,

WHEREAS, the City Commission has noticed, advertised, scheduled and held a public hearing in compliance with Florida Statutes on this proposed Ordinance; and,

WHEREAS, the City Commission has determined that it is advisable and in the public interest to adopt and implement the amended Public Facilities Impact Fees Ordinance.

NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Lake Wales, Florida, as follows:

SECTION 1. FINDINGS. The City Commission hereby adopts and incorporates the above stated Recitals as legislative findings that support and form the basis for the adoption of this ordinance. The effect of the amendment contained in this ordinance is to create and adopt an economic development impact fee mitigation program.

SECTION 2. AMENDMENT TO SECTION 23-761, CODE OF ORDINANCES OF THE CITY OF LAKE WALES, FLORIDA. That Section 23-761, Division 4, Chapter 23, Zoning, Development, and Land Use Regulation of the Code of Ordinances of the City of Lake Wales, Florida (hereafter “Code”), is hereby amended to read as follows:

Division 4. Public Facilities Impact Fees

“§ 23-761. Definitions.

When used in this division, the following words, terms or phrases shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Affordable housing shall mean a dwelling unit which is offered for sale or rent to low-income persons or very low-income persons and which monthly rent or monthly mortgage payments, including taxes and insurance, do not exceed thirty (30) percent of that amount which represents the percentage of the median adjusted gross income for low-income persons and very low-income persons.

Alternative impact fee shall mean any alternative fee calculated by an applicant and approved by the city manager or city commission pursuant to section 23-765.

Encumbered shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery or completion of goods, services or real property provided by a vendor, supplier, contractor or owner.

Fees shall mean, collectively, the impact fees imposed pursuant to this division.

Impact fee shall mean, collectively, the impact fees imposed pursuant to this division.

Impact fee study shall mean the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section ~~23-799~~783.

Infill lot shall mean any single vacant lot located in a predominately built-up area served by city utilities, which is bounded on two (2) or more sides by existing development. In addition, any lot that contains an existing building which will be removed and replaced with a new building shall also be considered an infill lot.

Mixed use construction shall mean construction in which more than one (1) impact fee land use category is contemplated, with each category consisting of a separate and identifiable enterprise not subordinate to or dependent on other enterprises within the construction.

Mobility plan shall mean a plan of multimodal projects that serve as the basis for development of a mobility plan and incorporated in the study adopted pursuant to section 23-763, as amended and supplemented pursuant to section ~~23-799~~783, or as adopted in the Comprehensive Plan.

Owner shall mean the person holding legal title to the real property upon which public facilities impact construction is to occur.

Person shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

Public facilities shall mean those facilities identified in this division for which impact fees are imposed.

Public facilities impact construction shall mean land development which changes the use of land in a manner which increases the impact upon the public facilities for which impact fees are imposed under this division.

Qualified Target Industry Business (or Target Sector Business) shall mean a new or expanding business in the areas listed as Target Sectors on the Central Florida Development Council website, which shall have a positive economic and fiscal impact in the City and meets the requirements of Section 288.106(q), Florida Statutes.

Residential shall mean apartments, condominiums, mobile homes or single-family detached houses.

Site-related improvement shall mean any improvement constructed on the development site which is required to connect a building or structure with a city capital facility.

Spec Building shall mean a new commercial construction of 50,000 square feet or more, which is built on speculation that it will be occupied by a Target Sector Business.”

SECTION 3. AMENDMENT TO SECTION 23-762, CODE OF ORDINANCES OF THE CITY OF LAKE WALES, FLORIDA. That Section 23-762, Division 4, Chapter 23, Zoning, Development, and Land Use Regulation of the Code of Ordinances of the City of Lake Wales, Florida (hereafter “Code”), is hereby amended to read as follows:

“§ 23-762 Legislative findings and intent.

- a. Both existing development and development resulting from growth, as contemplated by the comprehensive plan, will require improvements, and additions to public facilities to accommodate and maintain the level and quality of service adopted by the city.
- b. Future growth represented by public facilities impact construction should contribute its fair share to the cost of improvements and additions to public facilities that are required to accommodate the use of such facilities by growth.
- c. The required improvements and additions to the public facilities needed to accommodate existing development at the adopted level and quality of service shall be financed by revenue sources other than impact fees.
- d. Implementation of an impact fee structure to require future public facilities impact construction to contribute its fair share of the cost of improvements and additions to public facilities is an integral and vital element of the management of growth.
- e. Public facilities planning is an evolving process and the level and quality of service adopted by the city for such public facilities constitutes a balancing of anticipated need and the corresponding cost to implement such standard, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns, the needs of the community and the dynamics of public facilities planning, it is the intent of the commission that the level and quality of service and the cost of the various public facilities be reviewed and adjusted periodically, pursuant to section ~~23-799~~783, to insure that the impact fees imposed pursuant to this division are

- equitable and lawful based on the impact of growth upon these public facilities.
- f. This ordinance shall not be construed to permit the collection of impact fees from public facilities impact construction in excess of the amount reasonably anticipated to offset the need for and demand on those public facilities generated by such impact construction.
 - g. This division is intended to be consistent with the principles for allocating a fair share of the cost of new public facilities to new users as established by the Florida Supreme Court in the case of Contractor and Builders Association of Pinellas County vs. City of Dunedin, 329 So. 2nd 314 (FL 1976) and to meet the requirements of the "Florida Impact Fee Act," F.S. ch. 163.31801, particularly the requirement that impact fees are to be based on "the most recent and localized data."
(Ord. No. 2012-03, § 1, 2-7-12)
 - h. The imposition of Impact Fees herein may place the city in a noncompetitive position with other local Governments therefore, to encourage economic development opportunities within the city and to create permanent employment expansion opportunities for the City's citizens, the City Commission wishes to establish an economic development impact fee mitigation program."

SECTION 4. AMENDMENT TO SECTION 23-767, CODE OF ORDINANCES OF THE CITY OF LAKE WALES, FLORIDA. That Section 23-767, Division 4, Chapter 23, Zoning, Development, and Land Use Regulation of the Code of Ordinances of the City of Lake Wales, Florida (hereafter "Code"), is hereby amended to read as follows:

"§ 23-767. Exemptions.

The following shall be exempted from payment of impact fees:

- a. Alterations, expansions, or replacement of an existing dwelling unit which do not increase the number of families for which such dwelling unit is arranged, designed, or intended to accommodate for the purpose of providing living quarters.
- b. The alteration or expansion of an accessory building or structure which will not create additional dwelling units or will not increase the usable square footage space associated with the principal building on the land.
- c. The replacement of a dwelling unit or building with a new dwelling unit or building of the same size and use and which will not increase the square footage associated therewith; provided that the replacement of a dwelling unit or building which has been destroyed or otherwise rendered uninhabitable must be replaced within five (5) years of the date it was destroyed or rendered uninhabitable in order to be exempted from the payment of impact fees.
- d. Municipal buildings.
- e. Affordable housing in accordance with section 23-771
- f. Special districts. Any person seeking an exemption under the provisions of this section must submit an application to the administrative official with application for a building permit for the proposed construction or for a change of use. The application shall be made on a form provided by the city, and a legal description of

the property shall be required. The city manager shall approve the exemption if it meets the criteria for the special district in which it is located.

1. Community Redevelopment Area. The construction, alteration, or expansion of a non-residential structure within a community development area designated by the city's community redevelopment plan shall be exempt from the payment of police and fire impact fees. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764. This exemption shall also not extend to construction, alteration, or expansion on non-residential structures on property formerly known as the Cooperative Fruit Property and located on the east side of U.S. Highway 27.
2. National Historic Register District. The construction, alteration, or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic district regulatory board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764.
3. Core Improvement Area. The construction, alteration or expansion or change in the use of any structure within the "core improvement area" shall be exempt from the payment of impact fees except those for water and sewer, which are payable in accordance with section 23-764. The exemption includes Polk County impact fees per an agreement executed November 20, 2007 between the Polk County Board of County Commissioners and the City of Lake Wales.
- g. The construction, alteration, or expansion of any structure within a district designated on the National Historic Register shall be exempt from the payment of police, fire and parks and recreation impact fees provided such construction, alteration or expansion is determined by the historic preservation board to be consistent with the goals of historic preservation. This exemption shall not extend to the payment of water and sewer impact fees which are payable in accordance with section 23-764.
- h. Economic Development Impact Fee Mitigation. the City has created an economic development impact fee mitigation program for certain Qualified Target Industry Businesses, Property Owners, or Developers to mitigate any real or perceived disadvantage occurring from the imposition of the impact fees. To be eligible for an economic development impact fee mitigation, the Public Facilities Impact Construction Project must meet the eligibility requirements as set forth below:

Program A. Qualified Target Industry High Wage Job Creation

Pre-approved applicants who build a new facility, or expand a current facility and create qualified target sector industry high-wage jobs in the City of Lake Wales can receive, up to, a 50% to 90% reduction of utility impact fees.

<u>Number of jobs created</u>	<u>Average Wage</u>	<u>Capital Investment</u>	<u>Mitigation Amount*</u>
<u>10 -50</u>	<u>115%</u>	<u>\$5 million</u>	<u>50%</u>
<u>51 - 100</u>	<u>115%</u>	<u>\$5 million</u>	<u>70%</u>
<u>101+</u>	<u>115%</u>	<u>\$5 million</u>	<u>90%</u>
<u>Minimum of 10</u>	<u>125%</u>	<u>\$5 million</u>	<u>50%</u>
<u>Minimum of 10</u>	<u>150%</u>	<u>\$5 million</u>	<u>90%</u>

*For eligible projects, 50% of the approved mitigation amount will be deducted from the impact fees due at the time the building permit is issued. The job creation requirements must be met within five (5) years of Certificate of Occupancy in order to qualify for the remaining 50% of the approved mitigation amount. *It is up to the recipient of the mitigation award to provide proof to the City of Lake Wales, that the jobs have been created according to eligibility below to receive the remainder of the mitigation.*

Eligibility:

In order to participate, the company must apply to the City Manager of the City of Lake Wales with a letter of recommendation from the Lake Wales Economic Development Council prior to submitting a building permit and/or business tax receipt application.

- Demonstrate that the project will create at least 10 net, new full-time jobs in a Target Sector Business as listed on the Central Florida Development Council website - cfdc.org.
- Provide an employee benefit package to include health insurance.
- Pay an average annual wage that is at least 115% of Polk County’s average annual wage as published annually on the Florida Department of Economic Opportunity (DEO) Website or any successor agency. *(Average annual wage includes overtime and bonus, but not benefits).*
- The Target Sector Business or the owner of real property, but not both, can apply for the impact fee mitigation.
- Demonstrate that there is a real or perceived disadvantage occurring from the imposition of impact fees, fees, such as, if it weren’t for the incentive the business would not expand or build in Lake Wales.

Application Process:

- Applicant shall meet with Economic Development Council and City staff before and throughout the entire due diligence process to ensure the company understands what is required for a complete application.
- File an application with the City Manager’s office, along with \$500 for the administrative review fee, prior to submitting a building permit and/or business tax receipt application.

Approval Process:

- The City Manager has final approval of all projects.
- The City of Lake Wales will make every effort to expedite the process to meet the applicant’s schedule and will take no more than 30 days to evaluate a completed application.
- For approved eligible projects, 50% of the approved mitigation amount will be deducted from the utility impact fees due at the time the building permit is issued. The job creation requirements must be met within five (5) years of Certificate of Occupancy in order to qualify for the remaining 50% of the approved mitigation amount. *It is up to the recipient of the mitigation award to provide proof to the City of Lake Wales that the jobs have been created according to eligibility to receive the remainder of the mitigation.*

Program B. Inventory Development

Preapproved applicants who construct new commercial building inventory (Spec building) of at least 50,000 square feet, to accommodate land development regulations permitted industrial uses, are eligible for a reduction of utility impact fees.

Mitigation may only be applied to a maximum of 400,000 square feet; square footage beyond that is subject to utility impact fees.

<u>New Building Inventory Square Footage</u>	<u>Total Mitigation Amount</u>
<u>50,000 – 400,000</u>	<u>50%</u>

Eligibility:

In order to participate, the company must apply to the City Manager of the City of Lake Wales with a letter of recommendation from the Lake Wales Economic Development Council prior to pulling a building permit.

- Submit the application prior to applying for a building permit. Once the building permit has been issued, the company is no longer eligible.
- Demonstrate that there is a real or perceived disadvantage occurring from the imposition of impact fees, such as if it weren't for the incentive the builder would not build in Lake Wales.
- Industrial Uses are those determined in the City of Lake Wales Code of Ordinances Section 23-421. Permitted and special exception uses allowed in zoning district.

Application Process:

- Applicant shall meet with Economic Development Council and City staff who will help the applicant throughout the entire process to ensure the company understands what is required for a complete application.
- File an application with the City Manager's office, along with \$500 for the administrative review fee, prior to submitting a building permit application.

Approval Process:

- The City Manager has final approval of all projects.
- The City of Lake Wales will make every effort to expedite the process to meet the applicant's schedule and will take no more than 30 days to evaluate a completed application.
- For approved projects, the mitigation amount will be deducted from the utility impact fees due at the time the building permit is issued."

SECTION 5. AMENDMENT TO SECTION 23-770, CODE OF ORDINANCES OF THE CITY OF LAKE WALES, FLORIDA. That Section 23-7770, Division 4, Chapter 23, Zoning, Development, and Land Use Regulation of the Code of Ordinances of the City of Lake Wales, Florida (hereafter "Code"), is hereby amended to read as follows:

"§ 23-770. Developer contribution credit.

- a. The city may grant a credit against the impact fees imposed herein for:
 1. The donation of land or equipment, or the construction of public facilities made pursuant to a development agreement approved in accordance with division 2 of this article. Such donation or construction shall not be site-related improvements and shall be subject to the approval of the city commission.
 2. Certain developments which were impacted by the City's "Planning in Progress" Resolution 2023-02 for application review.
- b. Prior to the issuance of a building permit the applicant shall submit to the administrative official a proposed plan and estimates of costs for contributions to the public facilities. The proposed plan and estimates shall include:
 1. A legal description of any land proposed to be donated and a written appraisal prepared in conformity with paragraph c.5.A. below;
 2. A list of the contemplated public facilities improvements, apparatus or equipment sought to be donated;

3. An estimate of proposed construction costs certified by a professional architect or engineer;
 4. A written statement of the actual cost for any equipment or apparatus sought to be donated; and
 5. A proposed time schedule for completion of the proposed plan.
- c. The administrative official shall review the proposed plan and determine:
1. If such proposed plan is in conformity with contemplated improvements and additions to the public facilities;
 2. If the proposed donation of land or equipment or proposed construction by the applicant is consistent with the public interest; and
 3. If the proposed time schedule is consistent with the city's capital improvement program for the public facilities- ;or
 4. Allocation of Impact fee credits should the proposed development plan align with the aspirational requirements of Resolution 2023-02.
 5. The amount of developer contribution credit based upon the following standards of valuation:
 - A. The value of donated land shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between related parties in the bargaining transaction;
 - B. The cost of construction of public facilities shall be based upon the lowest of three (3) bids to perform construction in conformity with all construction standards of the city;
 - C. The value of apparatus and equipment shall be based on the actual cost; and
 - D. No more than one half (1/2) of the total impact fee due for all impact fees to be collected pursuant to Chapter 23, Article VII, Div. 4.
- d. Upon presentation of the plan to the city commission and approval of a development agreement pursuant to division 2 of this article, a revised impact fee statement shall be issued to the applicant reflecting the amount of impact fees due following the granting of the credit.
- e. Any applicant shall have a right of review pursuant to section 23-772 of the valuation by the administrative official of the developer contribution credit. However, there shall be no right of review as to the determination of the city commission to accept or reject the proposed plan of donation or construction.
- f. No credit shall be granted for the donation of land or equipment or for the construction of public facilities unless such donation or construction would be an authorized expenditure for the particular impact fee.
- g. The credit granted for the donation of land or equipment for the construction of public facilities by an applicant shall only be applied as a credit against the impact fee which provides the funds for the specific capital facility.
- h. Subsequent to processing of the developments which were in progress and impacted by the provisions of Resolution 2023-02 at the time of its adoption, the availability of impact fee credits (in whatever amount may be approved by the City Commission in its sole discretion) shall sunset and no longer be of any force or effect."

SECTION 6. SEVERABILITY. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

SECTION 7. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. EFFECTIVE DATE. This ordinance shall take effect in accordance with state law.

CERTIFIED AS TO PASSAGE this 15th day of August, 2023.

By: 
Jack Hilligoss Mayor/Commissioner
City of Lake Wales, FL

ATTEST: _____
Jennifer Nanek, CMC, City Clerk

APPROVED AS TO FORM & LEGALITY:


Thomas A. Cloud, Special Counsel WHET