

ORDINANCE NO. 171, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III IN CHAPTER 7.5 OF THE CODE OF THE CITY
OF FORT COLLINS PERTAINING TO THE CITY'S IMPOSITION OF LAND
DEDICATION REQUIREMENT AND FEES IN LIEU OF LAND DEDICATION
FOR PUBLIC SCHOOL SITE ACQUISITION AND DEVELOPMENT

WHEREAS, Section 22-54-102(3)(a) of the Colorado Revised Statutes ("C.R.S.") recognizes the authority of local governments and school districts to cooperate through intergovernmental agreements to fund, construct, maintain and manage capital construction projects, provided that funding is derived from a source of local government revenue that is otherwise authorized by law; and

WHEREAS, under its home rule powers in Article XX of the Colorado Constitution and its broad powers to regulate zoning and land use in Article 23 of Title 31 of the Colorado Revised Statutes, the City is authorized to impose land-dedication and fee-payment requirements on land developed within its boundaries to mitigate the impacts of that development on the need for public improvements and services, and to otherwise adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety and welfare of the City's residents; and

WHEREAS, the growth in residential land development in the City creates for the two school districts located within the City, the Poudre School District and Thompson School District (jointly, the "School Districts"), the need to build additional school facilities or to expand existing school facilities in order to accommodate the corresponding increases in the student population, which requires, in connection with such new development within the City, the dedication of land for new school facilities or the payment of an in-lieu fee to be used by the School Districts to buy the needed land or to expand existing school facilities to help to meet such demand ("In-lieu Fee"); and

WHEREAS, there is an essential nexus between the need for the dedication of school sites or the payment of an In-lieu Fee and the legitimate public purposes of promoting and preserving the public health, safety and welfare of the residents living in the boundaries of the City and the School Districts; and

WHEREAS, to establish the City's authority to impose land dedication and In-lieu Fee requirements on behalf of the School Districts, in May of 1998 the City Council added a new Article III to City Code Chapter 7.5, which Article III has been amended by Council several times since then; and

WHEREAS, in April 1998, the City entered into an intergovernmental agreement with each of the School Districts, which agreements implemented the City's authority established in Article III of Code Chapter 7.5 by providing for the dedication of land to each of the affected School Districts by developers of residential dwelling units to be used for the construction of new schools as needed to offset the impacts of those developments or, in the alternative, for the payment of a fee in-lieu of such dedication (the "School District IGAs"); and

WHEREAS, the term of each of the School District IGAs expired on April 21, 2018, but as authorized by the City Council in Resolution 2018-037, these terms were extended by the parties by written agreement through December 31, 2018, to give the staffs of the City and the School Districts more time to negotiate the terms of new intergovernmental agreements; and

WHEREAS, the staffs have completed those negotiations and City Council has been presented for its consideration those amended and restated intergovernmental agreements, but in order for the terms and conditions of these new agreements to be consistent with the provisions of Article III in Code Chapter 7.5, the significant amendments in this Ordinance to Article III are needed; and

WHEREAS, the City Council hereby finds and determines that these amendments, as set forth in this Ordinance, are necessary for the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 7.5-46 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-46. - Intent.

The provisions of this Article are intended to impose a requirement upon new residential development in the City that land be dedicated for school sites or, alternatively, the payments of a fee in lieu of such dedication. The imposition of such requirement is intended to regulate the use and development of land by ensuring that new growth and development in the City bear a proportionate share of the costs of acquiring and developing such school sites, in relation to the amount of the real property needed to provide adequate schools to serve such developments. Funds collected from any fees in lieu of land dedication imposed pursuant to this Article shall be used solely to fund the acquisition and development of such school sites and the planning of capital facilities to be developed thereon. All such amounts collected by the City shall be collected for the benefit of and remitted to the school districts serving the areas in which such fees are collected.

Section 3. That Section 7.5-47 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-47. - Definitions.

When used in this Article, the following words and terms shall have the following meanings:

Building permit shall mean the permit required for construction of new dwelling units under Article II of Code Chapter and the permit required for the installation of a mobile home pursuant to Code Section 18-8(b).

Developer shall mean the person or entity seeking land-use approval from the City for a Land Development Project or the person or entity otherwise responsible for land dedication or payment of fees in lieu of such dedication under this Article.

Dwelling unit shall mean one (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a *single-family*, *two-family* or *multi-family dwelling* or *mixed-use building*, as these terms are defined in the Land Use Code.

GMA shall mean the “Growth Management Area,” the boundaries of which are established in the Intergovernmental Agreement (Regarding Cooperation on Managing Urban Development) dated June 24, 2008, *nunc pro tunc* October 17, 2006, between the City and Larimer County, as such boundaries may be changed from time to time by written agreement of the City and Larimer County.

Land development project or *project* shall mean any proposed land development project for which a development application or development application for permitted use has been filed with the City under the Land Use Code or any subsequent amendment to a previously approved subdivision and which, if approved, could result in the construction of new dwelling units.

Land Use Code shall mean the City’s Land Use Code referenced in Code Section 29-1.

School district shall mean a public school district having an intergovernmental agreement with the City concerning the imposition of land dedication or fees in lieu of land dedication for school purposes.

School facility shall mean any building, structure or appurtenant facility, whether combined in a single structure or separate structures, that is required in the judgment of the school district’s board of education for the provision of K-12 educational services within the GMA or other geographical area as permitted by intergovernmental agreement between the City and the school district, including, without limitation, any classroom building, administrative office building, transportation center, athletic field and/or structure, stadium, indoor pool, maintenance building, teacherage and other employee housing and/or training facility.

School planning standards or *standards* shall mean the school district’s adopted land use standards, which have been approved and agreed to by the City pursuant to an intergovernmental agreement with the school district, which include student yields per dwelling unit for the three separate school levels, school facility capacities and the estimated fair market value of real property that is located within the boundaries of the City and the school district. Said fair market value shall be determined on the basis of the average value of developed sites for residential uses in the City as approved for development by the City, with curb, gutter, streets and utilities to the site, according to City engineering standards. These *standards* shall also include any methodology or formulas used to calculate land dedication requirements and the in-lieu fee based on the standards.

School site shall mean a tract or parcel of land dedicated by express language in the final plat of a land development project for the construction or expansion of school facilities.

School site acquisition and development shall mean the purchase and/or preparation of a school site and shall include, without limitation, survey work, grading, installation of utilities, street improvements, raw water acquisition, mobile classrooms and the expansion of existing school facilities. The term “purchase” for purposes of this definition refers to the dedication and conveyance of a school site to the school district and any other means by which the school district may obtain the legal right to develop, use and occupy a tract or parcel of land. The term “preparation” as used in this definition, may include expenditures for infrastructure on property adjacent to or related to the development of a school site itself. By way of illustration and not limitation, such expenditures may include streets and roads, extension of utilities and drainage structures and facilities.

Section 4. That Section 7.5-48 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-48. - Land dedication or in-lieu fees imposed.

(a) The developer of every land development project must file with the Building Official of the City, prior to the issuance of a building permit for any dwelling in such project, written proof confirming that the appropriate land dedication has been made to the school district; or the developer shall pay the in-lieu fee; in accordance with the provisions of this Article.

(b) Prior to or at the time that any proposed land development project is submitted to the City for review, the superintendent of the school district, or his or her designee, shall meet with the developer for the purpose of determining whether the school district desires the dedication of land for a school site within the land development project or, at the school district’s election, desires payment of the in-lieu fee. Any such dedication or in-lieu fee requirement shall be consistent with school planning.

(c) Any land dedication required under this Article shall be accomplished by the execution of a general warranty deed by the developer conveying to the school district the land required to be dedicated, free and clear of all liens, encumbrances and exceptions except those approved in writing by the school district, including, without limitation, real property taxes, which shall be prorated and paid by the developer as of the date of conveyance. The developer shall also provide to the school district a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property. At the time of dedication, the dedicated site shall have overlot grading, direct access to a publicly dedicated street improved to City standards and utilities stubbed to the school site. Upon completion of the conveyance in accordance with the provisions of this Section, the school district shall promptly certify to the City in writing that the dedication has been made.

(d) In the event that the dedication of sites or land areas for school site purposes within a particular land development project is not deemed feasible or in the best interests of the school district as determined by the superintendent, or his or her designee, the school district shall so notify the City's Director of Community Development and Neighborhood Services in writing, and the City shall require the developer to pay the in-lieu fees as provided in this Article. The amount of the in-lieu fees to be paid under the provisions of this Article shall be established by intergovernmental agreement between the City and the school district.

...

(f) Notwithstanding any of the foregoing in this Section, each of the following shall be exempt from the land-dedication requirement and the in-lieu fee payment requirement in this Article:

- (1) previously-approved and recorded land development projects, other than those phases for which final plats have not been approved;
- (2) alteration or expansion of a dwelling unit;
- (3) the installation of any mobile home that replaces a previously existing mobile home on an existing mobile home lot under Code Section 18-8(b);
- (4) replacement of a dwelling unit;
- (5) construction of an accessory building or structure;
- (6) long-term care facilities or group homes as defined in the Land Use Code;
- (7) land development projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents of all dwelling units in the project to persons 55 years of age or older, such that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. § 3607 (b) (2) (B);
- (8) land development projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents to 18 years of age or older and permanently restricting the affordability for all residents of all dwelling units and which combine the housing with services that help people who face the most complex challenges to live with stability, autonomy and dignity, such that the dwelling units may be classified as "permanent supportive housing"; and
- (9) land development projects for which the land-dedication requirement or the in-lieu fee payment requirement of this Article is prohibited by law.

Unless the land-dedication requirement or in-lieu fee payment requirement is prohibited by law, any claim of exemption as provided in this Section must be made by the developer no later than the time of submission of the application for the developer's land development project. Any claim of exemption not so made shall be deemed waived by the developer.

Section 5. That Section 7.5-50 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-50. - Use of funds by school district.

(a) All payments of the in-lieu fee collected by the City shall be promptly deposited into a separate account held by the City for the benefit of the school district. The City shall remit to the school district, no less than quarterly, all funds it has collected and deposited into the account, less a two percent (2%) administrative fee. The school district shall be the owner of the funds in the account and shall comply with the provisions of C.R.S. Section 29-1-801 et. seq. The school district shall be solely responsible for the funds it receives. Funds collected shall not constitute revenue of the City under the provisions of Article X, Section 20 of the Colorado Constitution.

(b) Except as may be otherwise provided by intergovernmental agreement between the City and school district, the funds deposited into the account shall be earmarked and expended only for the purposes of school site acquisition and development within the GMA or other geographical area as permitted by intergovernmental agreement between the City and the school district. When expenditures from the account are made for the acquisition of a school site or the expansion of a school facility, the expenditures may be made for school sites located anywhere within the GMA or other geographical area as permitted by intergovernmental agreement between the City and the school district. Subject to the limitations contained in this Article, the time for, nature, method and extent of such planning or development shall be within the sole discretion of the school district.

(c) Any in-lieu fees which have not been expended by the school district for the purposes set forth in this Section within ten (10) years of the date of collection shall be refunded, with interest equal to the interest that would have been earned over the same period by depositing the in-lieu fee in a Colorado Local Government Liquid Asset Trust Plus Account, as established and authorized in Part 7 of Article 75 in Title 24 of the Colorado Revised Statutes to the person(s) shown by the records of the Larimer County Assessor as being the then-current owner(s) of the property which was subject to the payment (the "property owner"), as of the ten-year anniversary of the date of collection. Notice of such refund opportunity shall be mailed to the property owner's address as reflected in the records of the Larimer County Assessor at the end of the ten-year period. If the property owner does not file a written claim for such refund with the school district within ninety (90) days of the mailing of such notice, such refund shall be forfeited and shall revert to the school district to be utilized for future school site acquisition and development purposes within the GMA or other geographical area as permitted by intergovernmental agreement between the City and the school district. The City Council may extend the ten-year expenditure deadline set forth herein upon the request of the school district for good cause shown and following a public hearing. "Good cause" for purposes of extending the ten-year deadline shall include, without limitation, a showing by the school district that it has plans approved by its school board for school site acquisition and development within the GMA or other geographical area as permitted by intergovernmental agreement between the City and the school district that will occur within the period of the extension requested and for which the in-lieu fees are needed.

Section 6. That Section 7.5-47 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-51. - Annual audit and review by school district and City.

(a) The school district and the City shall each separately cause an audit to be performed annually of the in-lieu payments they have each respectively collected and expended in accordance with this Article. The audit shall be conducted in accordance with generally accepted accounting principles for governmental entities and may be a part of any general audit annually conducted by the school district and the City. A copy of said school district's audit shall be furnished to the City. The cost of the school district's audit shall be paid from the school district's general fund. A copy of the City's audit shall be furnished to the school district. The cost of the City's audit shall be paid from the City's general fund.

(b) The school planning standards adopted pursuant to the provisions of the intergovernmental agreement between the City and the school district shall remain in effect unless and until updated

by the school district and approved by the City Council. If and when updates are adopted by the school district, a copy of such updates shall be furnished to the City within thirty (30) days after their adoption by the school district. The City Council shall thereafter either approve or reject the updated school planning standards; provided, however, that the City Council shall not unreasonably withhold or delay approval. Notwithstanding the foregoing, the City Council shall not be required to approve any school planning standards that propose an increase in the school site dedication requirements or the in-lieu fee amounts that are in excess of 10% of the requirements and amounts that are in the school planning standards being replaced and in no event shall the City Council be required to approve any school planning standards that propose land dedication requirements or in-lieu fee amounts that the City is not authorized by law to impose. The land dedication requirements and in-lieu fee amounts associated with the newly approved school planning standards shall be effective from the date of approval by the City Council. The City Council shall hold a public hearing before approving any new school planning standards.

Introduced, considered favorably on first reading, and ordered published this 4th day of December, A.D. 2018, and to be presented for final passage on the 18th day of December, A.D. 2018.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 18th day of December, A.D. 2018.

Mayor

ATTEST:

City Clerk