

TOWN OF WINDSOR

ORDINANCE NO. 2018 -1563

AN ORDINANCE REPEALING ARTICLE I OF CHAPTER 18 OF THE *WINDSOR MUNICIPAL CODE*, MAKING CERTAIN FINDINGS OF FACT, AND ADOPTING A PARK, OPEN SPACE AND TRAIL DEVELOPMENT FEE AS ARTICLE XVIII OF CHAPTER 17 OF THE *WINDSOR MUNICIPAL CODE*

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality with all powers and authority as provided by law; and

WHEREAS, the Town’s residents and visitors place a high value on public parks, open space and trails available within a reasonable distance throughout the Town’s corporate limits; and

WHEREAS, pursuant to Section 2.4 of the Home Rule Charter, and to the extent applicable, Title 29 of Colorado Revised Statutes, the Town is authorized to impose development requirements and to assess certain fees specifically imposed for the purpose of defraying the cost of providing legitimate governmental services; and

WHEREAS, on November 10, 2003, the Town Board adopted the *Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan* (“2003 Master Plan”); and

WHEREAS, the 2003 Master Plan established a level of service for parks and recreation and described the capital facility needs of the Town in order to meet the established level of service; and

WHEREAS, the 2003 Master Plan establishes a framework for the expansion and enhancement of the Town’s parks system based upon expected future growth; and

WHEREAS, the 2003 Master Plan has been updated and augmented, the most recent being the Town’s *2016 Parks, Recreation & Culture Master Plan* (“2016 Master Plan”); and

WHEREAS, in conjunction with the 2003 Master Plan, an Impact Fee Study was completed, establishing the costs of constructing neighborhood parks and community parks within the Town; and

WHEREAS, in 2004, the Town Board adopted a formula and methodology for the assessment of impact fees through the adoption of an ordinance since codified as Chapter 18, Article I of the *Windsor Municipal Code*, the purpose of which is to provide funding for new capital facilities for parks in response to residential development (“Park Improvement Fees”); and

WHEREAS, the Town Board reaffirms the formula and methodology behind existing Park Improvement Fees; and

WHEREAS, the Director of Parks, Recreation & Culture has recently undertaken a review of parks, open space and trails in light of projected residential build-out, and has concluded that the existing system of Park Improvement Fees requires modification; and

WHEREAS, the 2016 Master Plan quantifies the demand for new capital facilities, both in terms of required facilities and the projected costs thereof; and

WHEREAS, the 2016 Master Plan and projected costs associated therewith represents a reasonable determination of future capital costs for park land acquisition, park development, and trail connectivity necessary to achieve the level of service contemplated in the 2016 Master Plan; and

WHEREAS, the Town Board finds that the 2016 Master Plan, together with the 2004 Impact Fee Study and other investigations and reports of the Director of Parks, Recreation and Culture, submitted to and considered by the Town Board prior to the adoption of this Ordinance, sufficiently and completely justify the fees established herein; and

WHEREAS, the Town Board wishes to establish a revised system of Park Improvement Fees to provide a source of revenue reasonably sufficient to defray no more than the anticipated costs of future park, open space and trail capital improvements in response to residential development; and

WHEREAS, the Town Board has determined that it is reasonable, necessary, desirable and proper to adopt the fees established herein in order to provide for the orderly provision of municipal parks, trails recreation areas that may be required in connection with new residential development within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

**Section 1.** Article I of Section 18 of the *Windsor Municipal Code* is hereby repealed in its entirety, but shall be retained and codified as *Reserved* in order to maintain existing structure for remaining Articles therein.

**Section 2.** Chapter 17 of the *Windsor Municipal Code* is hereby amended by the addition of a new Article XVIII, which shall read as follows:

## **ARTICLE XVIII**

### **Park, Open Space and Trail Fees, Dedications, Reservations**

#### **Sec. 17-18-10. - Purpose and intent.**

(a) The provisions of this Article are intended to set forth certain land dedication requirements and development fees for the purpose of fulfilling additional capital requirements with regard to parks, open space and trails, reflective of the Town's projected population increases. The land dedication requirements shall be part of the approval of any

new subdivision of land within the Town that results in the creation of one or more lots for residential dwelling units.

(b) The land dedication requirements and the imposition of development fees in this Article are intended to regulate the use and development of land by ensuring that new growth and development in the Town bear a proportionate share of the cost of capital expenditures necessary to provide for the establishment of new parks, establishment of new open space, establishment of trails and capital improvement of these recreational resources. The land dedication requirements and fees set forth in this Article shall not be used to collect more than is necessary to fund such category of capital improvements. The land dedication requirements and development fees set forth in this Article are based upon the following documents, together with such other evidence considered by the Town Board in the adoption of this Article: (1) The 2016 Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan; (2) the Park Funds/Buildout analysis presented to the Town Board by the Director of Parks, Recreation & Culture on May 21, 2018; and (3) the Town's current Trails Master Plan and any cost analysis prepared by the Director of Parks, Recreation & Culture in association therewith, all of which are reaffirmed and incorporated herein by this reference.

(c) Dedicated lands and funds collected pursuant to this Article shall not be used to remedy existing deficiencies but only to provide new capital improvements necessitated by new development. The dedicated land and amount of revenue generated shall not exceed the cost of providing the capital improvements for which they are imposed, and the same shall be expended solely to provide the specified capital improvements. The Town Board finds that, based upon the foregoing documentation, an adequate, justifiable and reasonable basis exists upon which to require the dedication of land and to assess the fees established by this Article.

#### **Sec. 17-18-20. - Definitions.**

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

*Capital facilities* shall mean the purchase or long-term lease or lease-purchase of real property, the construction of public facilities or the purchase or long-term lease or lease-purchase of equipment or materials needed to facilitate the operation of such facilities or the delivery of services therefrom. Such facilities shall be directly related to services that the Town is authorized by Charter or state law to provide. The useful life of such facilities shall, in each instance, be no less than five (5) years.

*Community parks* shall mean parks within the benefit area, including Boardwalk Park, Eastman Park, Chimney Park and Diamond Valley Sports Complex, and all other community parks identified as such in the Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan and subsequent amendments thereto.

*Community Open Space* shall mean open space and conservation easements that serve the purpose of providing community-wide recreational areas consistent with the intent of the Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan

*Complete application* means an application wherein all of the required information and submittal materials in the particulars required by this Code, together with the required application fee have been submitted to and received by the Town department or official specified in this Code, and the zoning officer of the Town has certified the application as complete.

*Developed neighborhood park* shall mean a park constructed by the Town to its standards, and includes the infrastructure facilities, equipment and improvements as defined in the Park Impact Fee Study.

*Development* shall mean any construction of a new residential dwelling unit, any improvement or expansion of an existing structure that creates a new residential dwelling unit or any change in the use of land that creates a new residential dwelling unit.

*Level of service* shall mean a measure of the relationship between service capacity and service demand for capital facilities.

*Neighborhood parks* shall mean all parks within the benefit area other than community parks, identified in the Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan. *Neighborhood parks* shall include open space and conservation easements that serve the purpose of providing neighborhood recreational areas consistent with the intent of the Town of Windsor Parks, Recreation, Trails and Open Lands Master Plan.

*Residential dwelling unit* shall mean any housing facility in the Town, but shall not include any commercial enterprise such as a hotel, motel, inn or nursing home designed for lease as a transient residence.

*Trails* shall mean a pedestrian or bicycle access facility constructed by the Town to its standards, and includes the infrastructure facilities, equipment and improvements for pedestrian and bicycle access facilities as defined in the Town's adopted Trails Master Plan.

**Sec. 17-18-30. - Benefit areas and expenditures.**

(a) The Town Board finds and determines that all new development in the Town will benefit from the trails, open space, neighborhood parks and community parks to be developed hereunder. Therefore, the boundaries of the area to be benefited by such capital facilities are hereby determined to be identical to the boundaries of the Town, as those boundaries may be expanded or modified from time to time.

(b) All fee revenue generated under this Article shall be used only to acquire, construct, improve or expand capital facilities within the Town or within the Town's urban growth boundary, as may be permitted by law.

**Sec. 17-18-40. - Neighborhood park land dedication under former Chapter 18, Article I.**

(a) No neighborhood park land dedication, including the dedication of open space and conservation easements that serve the purpose of providing neighborhood-specific recreational areas, will be required following the effective date of this Article.

(b) All neighborhood park land dedicated under the former Chapter 18, Article I of the *Windsor Municipal Code* is hereby reaffirmed for the purposes for which such park land was dedicated.

**Sec. 17-18-50. - Disposition of Neighborhood Park Development Fees paid under the former Chapter 18, Article I.**

(a) All fee revenue derived from the Neighborhood Park Development Fees paid under the former Chapter 18, Article I of the *Windsor Municipal Code* shall be exclusively devoted to the construction of developed neighborhood parks. These funds shall be used to address the need for such capital facilities brought about by development, including the need for pedestrian and bicycle connectivity between neighborhood parks. These funds are separate and distinct from the impact fees otherwise addressed by this Article and other provisions of this Code. No Neighborhood Park Development Fee funds collected under the former Chapter 18, Article I of the *Windsor Municipal Code* shall be used for the maintenance, improvement or redevelopment of existing parks, trails or open space. These fees shall be segregated, credited and deposited into a special fund and shall not be transferred therefrom except to pay for the expenses directly attributable to the development of neighborhood parks as addressed herein. These fees shall not be used for general or other governmental or proprietary purposes of the Town except to pay for the equitable share of the cost of accounting and management thereof.

(b) Until such accumulated funds are exhausted or refunded in accordance with this Article, the Town Board shall annually appropriate all revenues heretofore accumulated in the Neighborhood Park Development Fee fund for the construction of developed neighborhood parks, and including new capital facilities necessary for pedestrian and bicycle connectivity between neighborhood parks, in general compliance with the Town of Windsor 2016 Parks, Recreation, Trails and Open Lands Master Plan.

**Sec. 17-18-60. – Park and Trail Development Fee.**

(a) There is hereby established a Park and Trail Development Fee, which shall be imposed pursuant to the provisions of this Article for the purpose of funding capital facilities related to the provision of community parks and recreational trails in accordance with (i) the 2016 Town of Windsor, Colorado, Parks, Recreation and Culture Master Plan and (ii) the

Town's current Trails Master Plan and any cost analysis to be prepared at the direction of the Director of Parks, Recreation & Culture in association therewith. All fees collected pursuant to this Article shall be expended for the acquisition of community park land, construction of developed community parks, acquisition of easements for trails, and development of trails. This Park and Trail Development Fee is designed to address the need for such capital facilities brought about by development and is separate and distinct from the impact fees otherwise addressed by this Article and other provisions of this Code. Such fee shall be due and payable upon the issuance of every building permit and shall initially be established at Five-Thousand-Two-Hundred-Thirteen Dollars (\$5,213.00) per dwelling unit, subject to annual adjustment as provided in Section 17-18-100 below.

(b) No Park and Trail Development Fee funds shall be used for the maintenance, improvement or redevelopment of existing capital facilities. These fees shall be segregated, credited and deposited into a special fund and shall not be transferred therefrom except to pay for the expenses directly attributable to the acquisition of community park land, construction of developed community parks, acquisition of easements for trails, and development of trails as addressed herein. These fees shall not be used for general or other governmental or proprietary purposes of the Town except to pay for the equitable share of the cost of accounting and management thereof.

**Sec. 17-18-70. - Unpaid charges constitute lien.**

Any unpaid fee imposed under this Article shall constitute a lien upon each lot or parcel of land for which a building permit is issued. In the event such a fee is not paid when due, in addition to any other legal and equitable means of collection provided by law, the Town Clerk shall certify such delinquent charges to the treasurer of the county or counties in which the development is located and the fee shall be collected in the same manner as though it were part of the taxes on the property. The Town reserves the right to withhold or revoke any permit, certificate or other approval of an applicant or obligor of the fee or other approvals to any applicant who is delinquent in the payment of the fee.

**Sec. 17-18-80. - Refunds.**

(a) All fees collected pursuant to the former Chapter 18, Article I of the *Windsor Municipal Code* shall be expended by the Town for purposes approved therein within ten (10) years of the date of payment. Any fee not so expended shall be refunded, upon application, to the record owner of the property for which the fee was paid or, if the fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund equal to the average rate of return on the Town's pooled investments during such period, plus two percent (2%); provided, however, that the Town shall retain an additional two percent (2%) of the total refunded fee to offset the cost of refund.

(b) All fees collected pursuant to this Article this Article shall be expended by the Town for purposes approved herein within ten (10) years of the date of payment. Any fee not so expended shall be refunded, upon application, to the record owner of the property for which

the fee was paid or, if the fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund equal to the average rate of return on the Town's pooled investments during such period, plus two percent (2%); provided, however, that the Town shall retain an additional two percent (2%) of the refunded fee to offset the cost of refund.

(c) Any application for a refund under the provisions of this Article shall be presented to the Town as provided in Section 17-18-90 below within one hundred eighty (180) days of the expiration of the ten-year period following the date of payment of such fee, in accordance with the procedures hereinafter set forth. If a refund is due hereunder, the amount of such refund shall be divided proportionately among all applicants for refunds who have filed applications during said one-hundred-eighty-day period; provided, however, that in no event shall the amount of any refund exceed the amount of the fee paid on behalf of the property for which the refund is sought, plus interest at a rate equal to the average rate of return on the Town's pooled investments during such period, plus two percent (2%).

**Sec. 17-18-90. - Procedure to obtain refund.**

(a) All applications for refund under this Article shall be submitted in writing to the Town Manager. Each application shall be in a form established by the Town Manager and shall contain the following:

(1) A copy of the dated receipt issued for payment of the fee, or other form of verification deemed sufficient by the Town Manager;

(2) A notarized, sworn statement that the applicant is the current owner of the real property for which the fee was paid; and

(3) A certified copy of the current deed to such property.

(b) The Town Manager shall determine within five (5) working days whether or not the application for a refund is sufficient on its face. If the Town Manager determines that the application is not sufficient, a written notice shall be mailed to the applicant within said period, specifying the deficiencies. No further action shall be taken on the application unless the deficiencies are remedied. Any deficiencies must be remedied within twenty (20) days of the date of mailing of the notice from the Town Manager or prior to the expiration of the period of time for filing an application for a refund, whichever is later. If the application is determined to be sufficient, the Town Manager shall notify the applicant, in writing, that the application will be reviewed pursuant to the procedures and standards of this Article.

(c) Within ten (10) working days after the application is deemed sufficient, the Town Manager shall determine whether the Town has expended the fee paid by the fee payer within the period required under this Article. If so, the application for refund shall be denied. If not, the applicant shall be entitled to a refund, except that the Town shall retain

an additional two percent (2%) of the refunded fee to offset the cost of administering the refund.

(d) The decision of the Town Manager with regard to any refund shall be final.

**Sec. 17-18-100. - Annual adjustment of fees, costs and land valuation.**

The fees established by this Article shall be adjusted annually to reflect the effects of inflation. Commencing on January 1, 2019, and on January 1 of each following year, unless the fees herein established are otherwise revised or replaced, such amounts set forth in this Article shall be adjusted for inflation by multiplying them by a ratio, the numerator of which is the most recently available two-year moving average of the annual Colorado Construction Cost Index by the Colorado Department of Transportation, and the denominator of which is the same index for a period one (1) year earlier than the numerator. The adjusted fee schedule shall be maintained by the Director of Parks, Recreation & Culture and made publicly-available upon request.

**Sec. 17-18-110. – Future Amendments (Open Space).**

In the event the costs of new capital facilities associated with the provision of open space are quantified through future legislatively-adopted master plans and studies, the Town Board shall have the authority to legislatively approve further impact fees as provided by law, which fee revenue shall be devoted exclusively to the provision of open space in accordance with such master plans and studies.

**Sec. 17-18-120. - Application of Article.**

This Article shall apply to all complete applications for development and complete building permit applications received after July 31, 2018.

Introduced, passed on first reading, and ordered published this 25<sup>th</sup> day of June, 2018.

TOWN OF WINDSOR, COLORADO

By Kristie Melendez  
Kristie Melendez, Mayor

ATTEST:

Amanda Mehlenbacher  
Amanda Mehlenbacher  
Deputy Town Clerk





Introduced, passed on second reading, and ordered published this 9<sup>th</sup> day of July, 2018.

TOWN OF WINDSOR, COLORADO

By Kristie Melendez  
Kristie Melendez, Mayor

ATTEST:

Amanda Mehlenbacher  
Amanda Mehlenbacher  
Deputy Town Clerk

