ORDINANCE NO. 0043-18-ORD

AN ORDINANCE OF THE LEWISVILLE CITY COUNCIL AMENDING CHAPTER 6, ARTICLE II, DIVISION II OF THE LEWISVILLE CITY CODE BY MAKING PROVISIONS FOR A PARK FEE CONSISTING OF A PARKLAND DEDICATION REQUIREMENT AND A PARK DEVELOPMENT FEE ON RESIDENTIAL DEVELOPMENT AND OTHER RELATED REQUIREMENTS; AMENDING CHAPTER 2, ARTICLE VIII, SECTION 2-201 BY AMENDING THE PARK DEVELOPMENT FEE RATE; PROVIDING A REPEALER, SEVERABILITY AND AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Lewisville has determined that for the health, welfare and safety of its citizens certain amendments to Chapters 2 and 6 of the Lewisville City Code are necessary; and

WHEREAS, the Lewisville City Council has adopted the Park Master Plan and Trails Master Plan, which provide planning policy and guidance for the municipal park and recreation system for the City of Lewisville; and

WHEREAS, said plans have assessed the need for parkland and park improvements, including trails, to serve the citizens of Lewisville; and

WHEREAS, the City of Lewisville has carefully assessed the impact on the park and recreation system created by each new development and has established dedication and development cost requirements based upon individual dwelling units; and

WHEREAS, the requirements constitute an individualized fact-based determination of the impact of new living units on the park and recreation system and ensure that new living units bear their proportional share of the cost of providing park and recreation related services; and

WHEREAS, parkland dedication requirements and park development fees are based upon the formulas and allocations set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. The statements made in the preamble hereinabove are hereby adopted and incorporated herein.

SECTION II. Chapter 6, article 2, division 2, sections 6-32 through 6-43 of the Lewisville City Code are hereby amended by deleting the current language and inserting the following new language:

ARTICLE II – GENERAL PROVISIONS

DIVISION 2 – PARK FEE

Sec. 6-32. Purpose and imposition.

(a) A park fee is hereby imposed on residential development to assure that park facilities, including trails, are available and adequate to meet the needs created by such development while maintaining current and proposed park and recreation standards pursuant to the Park Master Plan and Trails Master Plan. The park fee consists of a parkland dedication requirement and a park development fee. The park fee shall be imposed by the city on all residential development, and all funds collected shall be used solely and exclusively for the purpose of acquisition and development of park facilities necessitated by and serving such development.

(b) If a park fee (including parkland dedication or cash-in-lieu of parkland dedication) has been paid prior to the adoption of this division, that park fee (including parkland dedication or cash-in-lieu of parkland dedication) shall be controlled by the provisions of the ordinance in effect at the time such obligation arose.

Sec. 6-33. Definitions.

For purposes of this division only, the terms that follow shall have the meanings set forth herein. Terms not herein defined shall have those meanings given them by other provisions of the Lewisville City Code.

Applicant shall mean the property owner or duly designated agent of the property owner of land for which approval of a final plat for residential development has been requested.

Building shall mean any enclosed residential structure designed or intended for the support, enclosure, shelter or protection of persons.

Director shall mean the director of the Parks & Recreation Department or her authorized representative.

Dwelling shall mean any building, or portion thereof, designed exclusively for residential occupancy and containing one (1) or more dwelling units.

Dwelling unit shall mean one (1) or more rooms arranged, designed or used as separate living quarters for an individual family, which contains kitchen facilities (only one (1) per dwelling unit permitted), including at least a stove or cooking device and permanently installed sink, plus bathroom facilities.

Park facilities shall mean land and/or improvements used or to be used as a park, including trails, regardless of location, including both the acquisition of such land, the construction of improvements thereon and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design of the park, including trails, and improvements, utility relocation, provision of improvements, provision of pedestrian and vehicular access thereto and purchase of equipment, the need for which are attributable to new residential development.

Park Master Plan shall mean the adopted plan, as may be amended from time to time, which identifies those park facilities for a period of at least five (5) years, which are to be financed in whole or in part through the imposition of park fees pursuant to this division.

Property shall mean the legally described parcel of land capable of development pursuant to applicable city ordinances and regulations.

Property owner(s) shall mean any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the

land on which approval of a final plat for residential development has been requested.

Residential development shall mean the development of any property for a dwelling or dwellings, other than motels, hotels, shelter used temporarily for transients or other similar uses.

Trails Master Plan shall mean the adopted plan, as may be amended from time to time, which identifies trails, which are to be financed in whole or in part through the imposition of park fees pursuant to this division.

Sec. 6-34. Applicability.

(a) This division shall be uniformly applicable to residential development of property in the city which is or will be served by park facilities. This division does not apply to activities involving the replacement, reconstruction, remodeling, rehabilitation or other improvements to an existing building, or to the rebuilding of a damaged building, or to permits required for accessory uses, unless such activity results in an additional dwelling unit.

(b) For purposes of this division, property is "served by" park facilities when funds collected for such facilities have been spent for facilities identified in the Park Master Plan or Trails Master Plan within ten (10) years from the date of collection.

Sec. 6-35. Authority.

(a) This division is enacted pursuant to the city's police powers existing under the city's charter and consistent with the Texas Constitution, article XI, section 5, and applies to all property within the city's boundaries.

(b) The city shall adopt a Park Master Plan and a Trails Master Plan for the entire city, which identifies the park facilities which are to be acquired through parkland dedication requirements or financed in whole or in part through the imposition of park fees. Park fees may only be spent for park facilities identified in such plans. The plans shall be reviewed and updated at least every five (5) years by the City Council.

(c) Imposition of a park fee does not alter, negate, supersede or otherwise affect any other requirements of city, county, state or federal legislation or regulations that may be applicable to a development, including city zoning and/or subdivision regulations.

(d) The provisions of this division shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this division. Guidelines may be developed by resolution or ordinance to implement and administer this division.

Sec. 6-36. Park fee.

(a) Parkland dedication requirement

(1) For developments where all lots are for residential development, the parkland dedication requirement shall be determined by a ratio of three (3) acres for each 100 dwelling units. For calculation of developments with less than 100 dwelling units, each dwelling unit shall equal .03 acres. (Example: 25 dwelling unit development will require .75 acres).

i. Jurisdictional wetlands and property in established flood plains may be used to satisfy up to one-half of the parkland dedication requirement.

ii. A preliminary plat shall show the area proposed to be dedicated under this section. The property must be reviewed and accepted by the Director. If the area proposed for dedication is not consistent with the goals established in the Parks Master Plan or the Trails Master Plan, the city may require a cash-in-lieu of parkland dedication.

(2) Cash-in-lieu of parkland dedication

i. The city may require cash-in-lieu of parkland dedication. Such payment in lieu of land shall be made prior to final plat approval. The payment shall be proportional to the amount of land required to be dedicated and shall use the fair market value of the land at the time of construction of the development.

ii. The amount of the cash-in-lieu of parkland dedication shall be based on the following formula: (A x V) = M

A = the area of land required for dedication as determined in section 6-36(a).

V = the fair market value (per acre) of the property as established by a land appraisal conducted by a third party.

M = the number of dollars to be paid in lieu of the parkland dedication requirement.

iii. The Director shall be responsible for verifying the amount due.

iv. A combination of parkland dedication and cash-in-lieu of parkland dedication can be utilized to meet the parkland dedication requirement.

(b) Park development fee

The amount of the park development fee shall be based on the following formula: (R x DU) = F

R = the park development fee rate found in section 2-201, Fee schedule, of the Lewisville City Code.

DU = the total number of dwelling units in the residential development.

F = the number of dollars to be paid.

Sec. 6-37. Processing and collection.

Applicants for a residential development must submit a plat for review and approval pursuant to the land development regulations.

(a) The parkland dedication requirement (or cash-in-lieu of parkland dedication) and park development fee shall be imposed on all residential development in the city at the time of filing a final plat pursuant to the land development regulations, and all amounts due shall be paid prior to final plat approval.

(b) The parkland dedication requirement for each residential development shall contain a clear, fee simple dedication of an area of land within the development to the city for park facilities.

(c) Upon receipt of a preliminary plat or final plat whichever comes first, the city shall calculate the amount of the park development fee and the amount of cash-in-lieu of parkland dedication (when applicable) due pursuant to section 6-36.

(d) If fewer dwelling units are constructed than planned by the final plat, the property owner may apply for a refund for the difference in the number of dwelling units pursuant to section 6-39.

Sec. 6-38. Use of funds.

(a) Cash-in-lieu of parkland dedication and park development fees collected pursuant to this division must be used solely for one (1) of the following purposes:

(1) To acquire and develop park facilities, in accordance with the Park Master Plan and Trails Master Plan, subject to the provisions herein;
(2) To reimburse the city for prior acquisition and development of such park facilities, which will benefit the new residential development inhabitants; or
(3) To make refunds pursuant to section 6-39.

(b) Cash-in-lieu of parkland dedication and park development fees collected shall not be used to maintain or operate the existing park system or to finance park and recreational activities other than park facilities.

(c) Nothing in this division shall prevent the city from issuing and utilizing general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the city in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of park facilities as set forth in the Park Master Plan. Cash-in-lieu of parkland dedication and park development fees paid pursuant to this division, however, shall be used for park facilities acquisition and development.

(d) Interest earned on cash-in-lieu of parkland dedication and park development fees shall be used solely for the purposes specified herein.

(e) The city shall establish adequate financial and accounting controls to ensure that cash-in-lieu of parkland dedication and park development fees disbursed are utilized solely for the purposes and intent of this division; provided, however, that such funds shall be expended within a reasonable period of time, not to exceed ten (10) years from the date the funds are collected.

(f) The city shall maintain and keep financial records for the cash-in-lieu of parkland dedication and park development fees which shall show the source and disbursement of all funds collected.

Sec. 6-39. Refunds.

(a) The current owner of property on which a cash-in-lieu of parkland dedication payment and park development fee has been paid may apply for a refund of such funds if:

(1) The property on which the funds have been paid has not been served by park facilities, as provided in section 6-34; or
(2) Fewer dwelling units are constructed than planned by the final plat.

(b) Only the current owner of the property may petition for a refund. A petition for refund shall be filed within one (1) year of the event giving rise to the right to claim a refund, or the refund will not be granted.

(c) The petition for refund must be submitted to the Director on a form provided by the city for such purpose. The petition must contain the following: a certified copy of the latest recorded deed for the property; a current legal description; and a statement of the reasons for which a refund is sought.

(d) A refund shall be due under subsection 6-39(a)(1) only if the Director determines that the total funds collected for which a refund is being sought exceeds the total expenditures for park facility purposes allowed by this division for the same period ("excess amount"). The refund amount shall be the development's pro rata share of the excess of funds collected over expenditures, together with interest earned on such amount for the period. The city may periodically compute the difference between expenditures and funds collected for purposes of reviewing refund requests under this subsection. The city council may, after notice by publication in the section of a local newspaper reserved for legal notices, and after a public hearing, vote to apply any unclaimed excess amounts to the remaining park facilities. When the city council votes to apply the excess amounts, the right to refund of the applied excess amounts shall be extinguished.

(e) Within one (1) month of the date of receipt of a petition for refund, the Director must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due to the petitioner, the Director shall notify the city's finance department and request that a refund payment be made to petitioner.

(f) The petitioner may appeal the determination of the Director to the city council, and its decision shall be final.

Sec. 6-40. Procedures for updating the park fee.

(a) At least every five (5) years, the Director shall prepare a report to the city council on the park fee. In the preparation of such report, the following information shall be reviewed:

(1) A statement summarizing the parkland dedication requirements and the cash-in-lieu of parkland dedication requirements and park development fees collected and disbursed since the previous report;

(2) A statement summarizing park facilities acquisition and development and the status thereof since the previous report;
(3) A statement summarizing the administration and enforcement of park fees; and
(4) A statement and recommendation from the Park Board on all aspects of the park fee and city park needs.

(b) The report shall make recommendations, if appropriate, on amendments to this division, changes in the administration or enforcement of this division, changes in the parkland dedication requirements, cash-in-lieu of parkland dedication and park development fee rates, and changes in the Park Master Plan and the Trails Master Plan.

(c) Based upon the report and such other factors as the city council deems relevant and applicable, the city council may amend the park fee. If the city council fails to take action, the park fee then in effect shall remain in effect. Nothing herein precludes the city council or limits its discretion to amend the park fee at such other times as may be deemed necessary.

Sec. 6-41. Appeals and variances.

(a) The property owner or applicant may appeal the following decisions of the Director to the city council:

(1) The applicability of the park fee;
(2) The amount of the park fee due; or
(3) The amount of refund due, if any.

The burden of proof is on the property owner or applicant to demonstrate that the amount or applicability of the fee or refund, was not calculated according to the applicable schedule of fees or the guidelines established for determining such amounts. The property owner or applicant must file a notice of appeal with the city secretary within thirty (30) days following the determination by the Director. The filing of an appeal shall stay the matter until final determination by the city council.

(b) The city council may grant a variance from any requirements of this division, upon written request by a property owner or applicant, only upon a finding that a strict application of such requirement would result in a substantial hardship which is not common to similarly situated property owners.

Sec. 6-42. Park fee as additional and supplemental requirement.

The park fee is additional and supplemental to and not in substitution of any other requirements imposed by the city on the development of the land. It is intended to be consistent with and to further the objectives and policies of the Park Master Plan, the Trails Master Plan and the comprehensive plan and to be coordinated with other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate park facilities in conjunction with the development of land. In no event shall a property owner be obligated to dedicate land or pay for park facilities in an amount in excess of the amount calculated pursuant to this division; but provided that a property owner may be required, pursuant to city zoning and subdivision regulations, to provide open lands, setbacks, buffers and other nonbuildable area on-site in addition to meeting the park fee requirements.

SECTION III. Chapter 2, article VIII, section 2-201 of the Lewisville City Code is hereby amended by deleting the current park development fee and in its place inserting the following new park development fee rate:

Fee	Amount
Parks and Recreation Department	
Park development fee rate	$1,000 for each new dwelling unit

SECTION IV. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION V. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION VI. This ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION VII. It being for the public welfare that this ordinance be passed creates an emergency and public necessity, and the rule requiring this ordinance be read on three separate occasions be, and the same is hereby waived, and this ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 2ND DAY OF JULY, 2018.

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Worster, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY