

ORDINANCE NO. 796

AN ORDINANCE OF THE TOWN OF MILLIKEN, COLORADO, AMENDING CHAPTER 18 OF THE MILLIKEN MUNICIPAL CODE TO ADOPT PROCEDURES FOR COLLECTION OF FAIR CONTRIBUTION IN SUPPORT OF PUBLIC SCHOOLS

WHEREAS pursuant to Colorado Revised Statute section 31-23-201 et seq., as amended, the Town Board and the Planning Commission have adopted the goals, policies, and supporting data of the Milliken Comprehensive Plan in order to plan for the orderly growth of the Town;

WHEREAS the growth in residential land development in the Town necessitates the acquisition of sites and the building of additional school facilities and improvements to existing school facilities in order to accommodate the corresponding increases in the student population;

WHEREAS pursuant to Colorado Revised Statute sections 31-23-301, and 303, the Town is authorized to regulate and restrict the density of population of the Town for the purpose of promoting health, safety, morals, and general welfare of the community and to adopt regulations in accordance with the Comprehensive Plan to facilitate the adequate provision of schools;

WHEREAS Colorado Revised Statute section 31-12-108.5(1) requires that prior to any proposed annexation the Town must prepare a report addressing the effect of the proposed annexation upon an affected school district "including the estimated number of students generated and the capital construction required to educate such students;"

WHEREAS upon completion of a statutorily required public hearing, the Town must determine whether the state statutory requirements for annexation are met, and whether additional terms and conditions should be imposed;

WHEREAS the Colorado Supreme Court has held that the Public School Finance Act of 1994 does not prevent public school districts from entering into such agreements;

WHEREAS such agreements will provide for public improvements in a manner appropriate for a modern, efficiently functioning Town and ensure that new development does not negatively affect current educational levels within any affected school district, or require the existing citizens of the Town to underwrite the costs created by the new development;

WHEREAS such agreements are reasonably necessary to protect, enhance, and preserve the public health, safety, and welfare of the citizenry within the Town;

WHEREAS the Town, upon consideration of the effect of residential land developments and the ability of school districts to provide school sites and facilities in the Town, is in the process of negotiating and finalizing an Intergovernmental Agreement ("IGA") with the Weld County School District No. Re-5J ("School District") for the purpose of implementing such agreements with developers and forwarding any resulting payments to the School District, as provided in the IGA;

WHEREAS the Board of Trustees for the Town of Milliken, Colorado, (“Board”) desires to adopt new provisions codified in Chapter 18 of the Milliken Municipal Code as contemplated by the IGA;

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

Section 1. The following shall be added as a new Article XVII to Chapter 18 of the Milliken Municipal Code:

ARTICLE XVII – Public School Sites and Dedications

Sec. 18-17-10. - Fair contribution for public school sites.

- (a) As used in this article, “subdivider” means the applicant or proponent of any proposed (1) annexation of land that creates residential lots or (2) subdivision of land that creates residential lots, including any revision to any subdivision that results in the creation of additional residential lots.
- (b) The subdivider shall dedicate or convey land for a public school site to the appropriate school district, or, in the event the dedication of land is not deemed feasible or appropriate in accordance with the provisions of the agreements between the Town and the school districts, the subdivider shall make a payment in lieu of land dedication or conveyance. The amount of contribution of land, payment in lieu of land, or a combination of land and payment shall be determined pursuant to the agreements between the Town and the school districts, and will be referred to as the “fair contribution.”
- (c) The subdivider shall cooperate with, and participate in, the procedures set forth in the agreements between the Town and the school districts, which may involve meeting with school district and town representatives.

Sec. 18-17-20. - Exemptions from fair contributions for public school sites.

- (a) The following shall be exempted from land dedication requirements or in-lieu payment requirements:
 - (1) Alteration or expansion of a residential dwelling unit not exceeding a net increase of 1,000 square feet of the existing dwelling units.
 - (2) Construction of a non-dwelling unit, accessory building such as commercial or Industrial buildings, or structures.
 - (3) Construction of an accessory residential dwelling unit according to Milliken Municipal Code.
 - (4) Long-term care facilities and assisted living facilities as defined in the Town Code.

(5) Town-approved planned residential developments that are subject to recorded covenants restricting the age of the residents of said dwelling units such that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

(b) Any claim of exemption as provided in this Section 6 must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

Sec. 18-17-30. - Land dedication.

In the event the fair contribution for public school sites includes the dedication of land, prior to recording the final plat, the following items shall be completed by the subdivider:

1. The subdivider shall convey to the school district, by general warranty deed, title to the land slated for dedication, which title is 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 will be prorated to the date of conveyance or dedication.
2. The subdivider shall provide to the Town proof of the dedication or conveyance.
3. At the time of dedication or conveyance, the subdivider shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property.
4. At the appropriate time, not later than issuance of the first certificate of occupancy in the annexation, the Town may require the subdivider to enter into an agreement which may require, among other things, for the subdivider to pay one-half of street development costs, all of which costs have been considered and included in the determination of any required payment in lieu of land.

Sec. 18-17-40. - Cash in lieu of land dedication.

In the event the fair contribution for public school sites includes payment in lieu of the dedication of land, prior to the issuance of any building permit for any residential dwelling unit not otherwise exempt, the subdivider shall pay to the school district the cash to be paid in lieu of land dedication.

Section 2. Severability. If any part, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 3. Effective Date. Unless otherwise specified herein, this ordinance shall take effect thirty days after publication as provided by law.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 10th DAY OF November, 2021.

TOWN OF MILLIKEN



By: LeRon Ehrlich, Mayor Pro Tem

ATTEST:



Caree Rinebarger, Town Clerk

APPROVED AS TO FORM:



Matthew T. Gould, Town Attorney