

ORDINANCE NO. 2005-2

**AN ORDINANCE PROVIDING FOR THE IMPOSITION OF A PUBLIC  
PARKS AND RECREATION IMPACT FEE ON ALL NEW  
RESIDENTIAL DEVELOPMENT; AND PROVIDING FOR AN  
EFFECTIVE DATE OF May 12<sup>th</sup>, 2005.**

AMENDED March 13, 2008 with an Effective Date of April 1<sup>st</sup>, 2008

WHEREAS, pursuant to the Local Powers Act, W.Va. Code § 7-20-1 *et seq.*, counties in West Virginia have been authorized to adopt impact fees to fund capital improvements, including public parks and recreation facilities, required to accommodate new development projects, subject to compliance with the provisions of the Local Powers Act; and

WHEREAS Jefferson County, West Virginia (the "County"), has satisfied all of the requirements set forth in W.Va. Code § 7-20-6 as a prerequisite to the imposition of impact fees; and

WHEREAS the Jefferson County Commission (the "County Commission") retained TischlerBise, formerly, (the "Consultants") to analyze and assess growth and development projections for the County to determine the additional demand anticipated to be placed on the County for park land and recreation improvements and related equipment; and

WHEREAS the Consultants additionally reviewed the existing demand for public parks and recreation and associated land, improvements, and equipment, the existing parks and recreation system available to meet that demand; and the method of financing the existing public parks and recreation facilities; and

WHEREAS the County has adopted the methodology used by the consultant for the purpose of conducting updates to the parks and recreation impact fee, and [amended by the County

Commission, March 13, 2008]

WHEREAS the County has reviewed the existing level of service standards; and [amended by the County Commission, March 13, 2008]

WHEREAS the County has relied upon the actual costs of recent parks and recreation projects for a determination of the costs of park land and recreation related improvements and equipment; and [amended by the County Commission, March 13, 2008]

WHEREAS the parks and recreation impact fee will be imposed only on new residential development in the County; and

WHEREAS the County has reviewed and relied upon the County Comprehensive Plan which was amended on July 8<sup>th</sup>, 2004, and the County's six-year Capital Improvements Program; and [amended by the County Commission, March 13, 2008]

WHEREAS the population and new residential development projections for the County indicate: (1) that the population of the County will increase from approximately 44,184 persons in the year 2004 to approximately 71,820 persons in the year 2022; and (2) that housing units will increase from approximately 19,486 in the year 2004 to approximately 27,837 in the year 2022; and

WHEREAS the types of facilities and associated costs that are included in this impact fee cover land acquisition for park land and for the construction or acquisition of recreation related improvements and equipment; and

WHEREAS the parks and recreation impact fee calculation methodology is an incremental expansion methodology as described in the Park and Recreation Impact Fee Report for Jefferson County, West Virginia (prepared by Tischler & Associates, Inc., June 11, 2003, updated for Parks and Recreation on October 5<sup>th</sup>, 2004, subsequently updated by County Staff on  
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April 20th, 2005 and again in December of 2007, with all costs attributable 100% to residential development, and excluding non-residential development; and [amended by the County Commission, March 13, 2008]

WHEREAS, in calculating the appropriate impact fee to be imposed on new residential development, the County assumed that the existing level of service standards would be maintained in the future and that the acquisition of new park land and the cost of the construction of new recreation facilities and to serve the demand imposed by new growth would be paid for entirely by the parks and recreation impact fees; and [amended by the County Commission, March 13, 2008]

WHEREAS the net capital costs for park land, improvements, vehicles, equipment and constant cost have been calculated and are reported in the Parks & Recreation Impact Fee Study, dated December 2007, and serve as the basis for the maximum supportable impact fee for Parks & Recreation, and [amended by the County Commission, March 13, 2008]

WHEREAS the County has prepared an Impact Fees Report (December 2007) including the park and recreation impact fee assumptions, population and residential development projections, capital improvements and impact fee calculations, which Report has been submitted to and reviewed by County staff and officials; and [amended by the County Commission, March 13, 2008]

WHEREAS the County Parks are generally large and generally offer facilities and services not offered by any municipality and therefore represent a regional park system; and

WHEREAS it is reasonable to assume that all residents of Jefferson County, including the residents of each of the incorporated municipalities use the parks and recreational facilities which are supported and maintained by Jefferson County, and

WHEREAS the County did not incorporate any park land or park facilities owned by any municipality or private concern into the impact fee calculation and therefore the Parks and

Recreation impact fee is only calculated with the consideration, and for the benefit, of the County park system, and therefore this fee does not preclude any municipality from levying proffers or other fees to benefit their local park and recreation services; and

WHEREAS the Impact Fees Report has been presented to and reviewed by the County Commission, which has determined: (1) that the parks and recreation impact fee is necessary to offset the costs associated with meeting the demand for future parks and recreational facilities, pursuant to the development projections; (2) that the parks and recreation impact fee bears a reasonable relationship to the burden imposed upon the County to provide new park and recreation facilities to new residents, and provides a benefit to such new residents reasonably related to parks and recreation impact fee, per dwelling unit, by type; (3) that an “essential nexus” exists between the projected new residential development and the need for additional park land and recreation facilities to be funded via the parks and recreation impact fee; and (4) that the amount of the parks and recreation impact fee is “roughly proportional” to the pro rata share of the additional park land and recreational facilities needed to provide adequate recreational opportunities to new residential development, while maintaining not less than the existing level of service (LOS) standard currently provided to County residents; and

WHEREAS the County Commission has adopted an Impact Fees Procedures Ordinance setting forth the procedures for the imposition and collection of impact fees; and

WHEREAS the County Commission has conducted a public hearing on the proposed parks and recreation impact fee; and

WHEREAS the parks and recreation impact fee adopted pursuant to this Ordinance shall be effective on May 12<sup>th</sup>, 2005 with amendments to take effect on April 1<sup>st</sup>, 2008 [amended by the County Commission, March 13, 2008].

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the County Commission of Jefferson County, West Virginia, that:

**SECTION 1. RULES OF CONSTRUCTION**

(1) Unless otherwise defined within this Ordinance, the words used have the meanings given to them in the Impact Fee Procedures Ordinance for Jefferson County.

**SECTION 2. ADOPTION OF A PARKS and RECREATION IMPACT FEE.**

(1) The applicable development/service area (the “Service Area”) for imposition of a Parks and Recreation Impact Fee is the entire County, including all incorporated Municipalities.

(2) All new dwelling units in the Service Area shall be subject to the payment of a Parks and Recreation Impact Fee payable at the time of issuance of a building permit by the County or a Municipality, as applicable, pursuant to this Section and the Impact Fee Procedures Ordinance, as follows:

<b><u>Residential Development</u></b>	<b><u>Impact Fee Per Dwelling Unit</u></b>
Single Family Detached, including mobile homes	\$ 752
Townhouse/Duplex	\$ 575
Multi-family unit	\$ 566

[amended by the County Commission, March 13, 2008]

(3) On April 1, 2006, and on April 1<sup>st</sup> of each year thereafter in which the Parks and Recreation Impact Fee is in effect, the amount of the development impact fee, per dwelling unit, shall be adjusted pursuant to the Annual Review process as set forth in Section 6 of the Impact Fee Procedures Ordinance.

(4) Nothing herein shall prevent the County Commission from electing to retain the existing Parks and Recreation Impact Fee or from electing to waive the adjustment for any given fiscal year, or years.

(5) Nothing in this ordinance shall prevent any municipality from establishing or maintaining a municipal Park & Recreation system using municipal funds. In the event a municipality does establish and/or maintain municipal-owned parks, then that municipality may submit evidence to the Impact Fee Coordinator indicating that the Park & Recreation fee as set forth in Section 2 (2), above, is not appropriate for that municipality. Based upon evidence that the municipality is providing all or a portion of the types of facilities for which the park and recreation impact fees are imposed, the County Commission may eliminate or adjust the fee for that municipality. Such adjustment or elimination of the Parks & Recreation Impact Fee shall be in accordance with §7-20-1 *et seq* of the West Virginia Code.

### **SECTION 3. LIBERAL CONSTRUCTION.**

The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes in the interest of further promoting and protecting the public health, safety and welfare.

### **SECTION 4. SEPARABILITY.**

(1) If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of this Ordinance shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance which shall continue in full force and effect.

(2) If the application of any provision of this Ordinance to any new development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the County Commissioners is that such decision shall be limited only to the specific new development expressly involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Ordinance as a whole or the application of any provision of this Ordinance to any other new development.

**SECTION 5. EFFECTIVE DATE; ELECTION.**

(1) This Ordinance shall be effective on May 12<sup>th</sup>, 2005; however, no Parks and Recreation Impact Fee shall be collected by the County until the sixty-first (61<sup>st</sup>) day after the date of the adoption of this Ordinance.

(2) In the event that, within forty-five days after the effective date of this Ordinance, fifteen percent (15%) of the qualified voters of the County file with the County Commission a petition, duly signed by them in their own handwriting, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of the County at any primary, general or special election as the County Commission directs. Voting thereon may not take place until after notice of the subcommission of the fee or levy on the ballot has been given by publication of class II legal advertisement and publication area shall be the County.

The undersigned hereby certifies that this Ordinance was approved and adopted by the Jefferson County Commission on the 12<sup>th</sup> day of May, 2005 and amended on (March 13, 2008).

**JEFFERSON COUNTY COMMISSION**

**ATTEST:**

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By: \_\_\_\_\_

President