

Meeting Date
October 6, 2015



AGENDA	
Section	Public Hearing
Item No.	IV. B

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	PUBLIC HEARING RE: EDUCATIONAL FACILITIES IMPACT FEE ORDINANCE (DISTRICTS 1 - 5)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:

It is requested that the Board of County Commissioners consider approval of the Educational Facilities Impact Fee Ordinance and authorize the Chairman to execute the ordinance if adopted.

Summary Explanation & Background:

At the July 16, 2015 workshop, the Board directed staff to prepare an ordinance that would establish a new educational facilities impact fee rate schedule based on 50% of the amounts recommended by the Brevard County Impact Fee Update Study of 2015 and that would consolidate the four benefit districts into two new districts. The draft ordinance will accomplish both of these directives and will implement several minor revisions to the adopted educational impact fee code that were identified as audit findings in the external audit of the educational impact fee program in 2013.

Florida Statutes require that a ninety day notice be given when an impact fee rate is increased. Accordingly, the effective date provisions of the proposed ordinance state that any person that has submitted a complete building permit application to the County or any municipality prior to the effective date of January 4, 2016 will be entitled to use the existing impact fee rate schedule. The effective date provisions also allow any person that submits a bona fide sales contract to the County prior the effective date to use the existing rate schedule.

The Building & Construction Advisory Committee reviewed the draft ordinance at their September 9, 2015 meeting and voted 4 – 0 to recommend that the impact fee rate for single family detached residences not be increased and that the impact fee rates for multi-family and manufactured housing be reduced as recommended. The BCAC voted 3 – 1 to recommend the consolidation of the existing benefit districts into two new districts be approved.

The Local Planning Agency will consider the draft ordinance on September 28, 2015. Staff will apprise the Board of the LPA's recommendation.

Fiscal Impact: FY16 – Aggregated educational impact fee revenues are expected to increase by 10% or approximately \$500,000 in fiscal year 2015/16.

Staff Contact: Stephen M. Swanke
(321) 633-2069

Clerk to the Board instruction:

Exhibits Attached:

Draft Educational Facilities Impact Fee Ordinance

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager

Assistant County Manager

Department Director / Extension

Stockton Whitten

Robin M. Sobrino
 Robin M. Sobrino, AICP
 5-2069



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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October 7, 2015

MEMORANDUM

TO: Robin Sobrino, Planning and Development Director Attn: Stephen Swanke

RE: Item IV.B., Educational Facilities Impact Fee

The Board of County Commissioners, in regular session on October 6, 2015, continued the public hearing to consider the Educational Facilities Impact Fee ordinance for one year.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/ds

cc: County Manager
County Attorney
Finance
Budget

ORDINANCE # 15-

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V "IMPACT FEES"; AMENDING DIVISION 7 "EDUCATIONAL FACILITIES"; AMENDING SECTION 62-923 "FINDINGS" TO CLARIFY THAT PROVISIONS RELATING TO AFFORDABLE HOUSING ARE INCENTIVES RATHER THAN EXEMPTIONS; AMENDING SECTION 62-927 "COMPUTATION" TO REVISE EDUCATIONAL IMPACT FEE RATES; AMENDING SECTION 62-928 "PAYMENT" TO ADDRESS AUDIT FINDINGS REGARDING INCONSISTENT PROVISIONS; AMENDING SECTION 62-929 "DISTRICTS ESTABLISHED" TO CONSOLIDATE FOUR BENEFIT DISTRICTS INTO TWO BENEFIT DISTRICTS; AMENDING SECTION 62-930 "TRUST FUND" TO CLARIFY THAT THERE ARE TWO IMPACT FEE BENEFIT DISTRICT TRUST FUNDS RATHER THAN FOUR; AMENDING SECTION 62-933 "EXEMPTIONS, CREDITS & INCENTIVES" TO ESTABLISH A REDEVELOPMENT CREDIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR AREA EMBRACED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Brevard County Comprehensive Plan establishes the objective of providing essential public services and facilities that are effective, efficient, and adequate to meet the needs of the projected population and that support and reinforce the growth management and land development guidelines; and

WHEREAS, the Brevard County Comprehensive Plan establishes the guideline that new development provide the essential services needed by the new development either through actual construction of the applicable facilities or through specific revenue producing mechanisms; and

WHEREAS, the Brevard County Comprehensive Plan states that the imposition of impact fees is one of the land use regulatory devices that assures that new development will help finance additional facilities required as a result of the new development to provide a minimum level of capital facilities; and

WHEREAS, the Florida Legislature, through the enactment of Section 163.3202(3), Florida Statutes, has sought to encourage local governments to enact impact fees as land development

regulations; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida has authorized an independent study to analyze the fiscal impacts of development activity on the public primary and secondary educational system; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida approved this independent study on July 16, 2015; and

WHEREAS, this independent study calculated the maximum impact fees that could be imposed for educational facilities based on currently available data and analysis; and

WHEREAS, the Florida Legislature, through the enactment of Chapter 2004-354, General Laws of Florida, has enabled, Educational Facilities Impact Fees to be expended on the construction of facilities for use by charter schools that have been specifically created to mitigate the educational impact created by development of new residential units; and

WHEREAS, the Board of County Commissioners authorized an external audit of the Educational Facilities Impact Fee program and did receive the findings of said audit on December 2, 2013; and

WHEREAS, resolution of certain audit findings required amendment of Chapter 62, Article V, Division 7 of the Code of Ordinances of Brevard County, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

Section 1. Chapter 62, Article V, Division 7, Section 62-923 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-923. Findings.

Based on information provided by the School Board, the Board of County Commissioners makes the following findings and determinations:

- (1) Under established levels of service for educational facilities, the existing educational infrastructure is not adequate to accommodate students anticipated to reside in the county as a result of new residential development.
- (2) Existing revenue sources available for the construction of additional educational facilities are not sufficient to fund construction of the educational facilities necessary to accommodate the students anticipated to reside in new development.
- (3) New development should contribute its fair share of the costs of providing new educational facilities necessary to accommodate the students anticipated to reside in new development.
- (4) Impact fees provide a reasonable method of regulating new development in the county to ensure that such new development pays its fair share of the capital costs of governmental services and facilities necessary to accommodate the new development.
- (5) The impact fees set forth in this division are not established at a rate to correct existing deficiencies.
- (6) The impact fees set forth in this division establish a fair and conservative method of assessing new development its fair share costs.
- (7) The impact fees will not fully pay for the costs of educational facilities necessitated by new development, and the School Board and Board of County Commissioners recognize that the shortfall will have to come from other revenue sources.
- (8) The educational facilities impact fee benefit districts established in this division ensure that capital improvements to the educational system will benefit the development located within each district.
- (9) The Board of County Commissioners finds that residential communities where restrictions limiting the age of residents to 55 years of age and older have been legally recognized as having no impact on educational facilities and that, consequently, an educational facilities impact fee exemption should be established for such facilities.
- (10) The Board of County Commissioners finds that an educational facilities impact fee ~~exemption~~ incentive for low income and very low income families under specific circumstances will implement the goal of providing affordable housing for low and very-low income homebuyers, as set forth in following criteria contained in policy 1.1 of the Housing Element in the Brevard County Comprehensive Plan:
 - D. Ensure that homes purchased by low and very-low income homebuyers are brought up to Section 8 Housing Quality Standards or higher.
 - E. Encourage mortgage lenders to invest mortgage dollars in housing for low and very-low income families.
 - F. Encourage mortgage lenders to investigate and utilize existing programs, such as Fannie Mae, for low income homebuyers.

(11) The Board of County Commissioners finds that formation of municipal-operated charter schools are one method of reducing school and classroom overcrowding and offsetting the high cost of educational facilities in Brevard County.

Section 2. Chapter 62, Article V, Division 7, Section 62-927 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-927. Computation.

(a) The amount of the fee imposed by this division shall be determined by the following fee schedule unless the fee payer provides an impact fee study in accordance with subparagraph (b) below:

SCHEDULE OF EDUCATIONAL FACILITIES IMPACT FEES

Land Use Type	Impact Fee for Each Separate Dwelling Unit
Single Family Detached Dwelling	\$4,445.40 <u>\$5,096.50</u>
Attached Residential Dwelling	\$2,794.25 <u>\$1,940.50</u>
Manufactured Home or Mobile Home	\$2,667.24 <u>\$1,256.50</u>

If the type of residential development activity for which a building permit is applied for is not specified on the fee schedule set out in this subsection, the county manager shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

(b) If a fee payer opts not to have the impact fees determined according to subsection (a) of this section, then the fee payer shall prepare and submit to the county manager an independent fee calculation study for the residential development activity for which a building permit is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for such a study established by the county manager. The prescribed methodologies and formats established by the county manager for independent fee calculation studies shall ensure that the calculation of student generation rates and/or educational impacts is representative of a statistically significant percentage of similar residential types found in Brevard County and is consistent with the methodologies utilized in the Brevard County School Impact Fee Study. If the county manager concludes that the independent fee calculation study submitted by the fee payer represents an accurate calculation of the fiscal impacts of the new residential development activity, then the educational facilities impact fee may be adjusted accordingly for the fee payer's property.

Section 3. Chapter 62, Article V, Division 7, Section 62-928 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-928. Payment.

(a) Any person receiving a building permit for which an educational facilities impact fee has been assessed shall pay the assessed fee to the Board of County Commissioners prior to the issuance of a

certificate of occupancy for the permitted residential building or, in the case of a mobile home, prior to the issuance of a certificate of completion or other document evidencing completion. Neither Brevard County nor any municipality in Brevard County shall issue either a certificate of occupancy for a residential building or a certificate of completion for a mobile home installation until all assessed educational facilities impact fees have been paid. The obligation to pay the fee shall run with the land. ~~A municipality may require payment of the educational facilities impact fee at any point prior to the issuance of a certificate of occupancy or, in the case of a mobile home, prior to the issuance of a certificate of completion.~~

(b) All funds collected shall be properly identified by educational facilities impact fee district; promptly transferred for deposit in the appropriate Educational Facilities Impact Fee Trust Fund, to be held in separate accounts as determined in § 62-930; and used solely for the purposes specified in this division.

Section 4. Chapter 62, Article V, Division 7, Section 62-929 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-929. Districts established.

There are hereby established ~~four~~ two educational facilities impact fee benefit districts with boundaries as shown below.

Benefit District 1

North	Northern Boundary of: Sections 31, 32, 33, 34, 35 & 36 of T27S, R35E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R36E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R37E; and Section 31 of T27S, R38E.
South	<u>Indian River County Line</u>
East	<u>Atlantic Ocean</u>
West	<u>Oseola County Line</u>

Benefit District 2

North	Northern Boundary of: Sections 1, 2, 3, 4, 5 & 6 of T26S, R35E; Sections 1, 2, 3, 4, 5 & 6 of T26S, R36E; Sections 5 & 6 of T26S, R37E; and Sections 14, 15 & 16 of T24S, R37E.
South	Northern Boundary of: Sections 31, 32, 33, 34, 35 & 36 of T27S, R35E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R36E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R37E; and Section 31 of T27S, R38E.
East	<u>Atlantic Ocean</u>
West	Western Boundary of: Sections 6, 7, 18, 19 & 30 of T27S, R35E; Sections 6, 7, 18, 19, 30 & 31 of T26S, R35E; Eastern Boundary of: Sections 6, 7, 17, 19, 30 & 31 of T25S, R37E; Sections 18, 19, 30 & 31 of T24S, R37E.

Benefit District 3

North	Northern Boundary of: Sections 35 & 36 of T23S, R34E; Sections 31, 32, 33, 34, 35 & 36 of T23S, R35E; Section 31 of T23S, R36E; Sections 1, 2, 3, 4 & 5 of T23S, R36E; and Sections 3, 4, 5 & 6 of T23S, R37E.
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South	Northern Boundary of: Sections 1, 2, 3, 4, 5 & 6 of T26S, R35E; and Sections 1, 2, 3, 4, 5 & 6 of T26S, R36E, Sections 5 & 6 of T26S, R37E.
East	Eastern Boundary of: Sections 3, 9, 16, 17, 20, 29 & 32 of T23S, R37E; Sections 6, 7, 18, 19, 30 & 31 of T24S, R37E; and Sections 6, 7, 17, 19, 30 & 31 of T25S, R37E.
West	Orange County Line, Osceola County Line & Western Boundary of: Sections 5, 8, 17, 20, 29 & 32 of T23S, R36E.

Benefit District 4

North	Volusia County Line
South	Northern Boundary of: Sections 35 & 36 of T23S, R34E; Sections 31, 32, 33, 34, 35 & 36 of T23S, R35E; Section 31 of T23S, R36E; Sections 1, 2, 3, 4 & 5 of T23S, R36E; Sections 3, 4, 5 & 6 of T23S, R37E; and Sections 14, 15 & 16 of T24S, R37E.
East	Atlantic Ocean
West	Orange County Line & Volusia County Line

Benefit District 1

North	Volusia County Line
South	<u>Northern Boundary of: Sections 19, 20, 21, 22, 23 & 24 of T25S, R35E; Northern Boundary of Sections 19 & 20 of T25S, R36E; Eastern Boundary of Sections 20 & 29 of T25S, R36E; Northern Boundary of Sections 33, 34, 35 & 36 of T25S, R36E; Eastern Boundary of Section 36 of T25S, R36E; Eastern Boundary of Sections 1 & 12 of T25S, R36E; Northern Boundary of Section 18 of T25S, R37E; Eastern Boundary of Sections 18 & 19 of T25S, R37E; and the Northern Boundary of Sections 20, 21, 22 & 23 of T25S, R37E.</u>
East	Atlantic Ocean
West	Volusia, Orange & Osceola County Line

Benefit District 2

North	<u>Northern Boundary of: Sections 19, 20, 21, 22, 23 & 24 of T25S, R35E; Northern Boundary of Sections 19 & 20 of T25S, R36E; Eastern Boundary of Sections 20 & 29 of T25S, R36E; Northern Boundary of Sections 33, 34, 35 & 36 of T25S, R36E; Eastern Boundary of Section 36 of T25S, R36E; Eastern Boundary of Sections 1 & 12 of T25S, R36E; Northern Boundary of Section 18 of T25S, R37E; Eastern Boundary of Sections 18 & 19 of T25S, R37E; and the Northern Boundary of Sections 20, 21, 22 & 23 of T25S, R37E.</u>
South	Indian River County Line
East	Atlantic Ocean
West	Osceola County Line

Section 5. Chapter 62, Article V, Division 7, Section 62-930 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-930. Trust fund.

- (a) There is hereby established an educational facilities impact fee trust fund for each of the ~~four~~ two educational facilities impact fee benefit districts established by § 62-929.
- (b) Funds withdrawn from these accounts must be used in accordance with the provisions of § 62-931.

Section 6. Chapter 62, Article V, Division 7, Section 62-933 shall be revised as shown herein with deletions shown stricken through and additions shown underlined:

Sec. 62-933. Exemptions, credits and incentives.

- (a) *Exemptions.* The following shall be exempted from payment of the educational facilities impact fee:
- (1) Alteration or expansion of an existing residential building where no additional dwelling units are created.
 - (2) The construction of accessory buildings or structures where no additional dwelling units are created.
 - (3) The replacement of an existing residential building, including those partially or entirely damaged or destroyed, with a new unit of the same type and use ~~provided that the existing residential building has been occupied at some time during the five-year period immediately preceding the construction of the new residential building.~~
 - (4) Any nonresidential building or structure.
 - (5) The construction of government owned residential buildings, which are utilized in their entirety for public purposes.
 - (6) Any new single family detached residence, attached residential dwelling, manufactured or mobile home located in a development that provides significant facilities and services designed to meet the physical or social needs of older persons and where, by recorded deed restriction, recorded declaration of covenants and restrictions, recorded plat restriction or recorded by-laws that require at least one person in each residence to be age 55 or older and that prohibit any person that has not achieved the age of 18 years to reside on a permanent basis. The fee payer must claim an exemption at the time of the application for a building permit or permit for the installation of a manufactured or mobile home. Any exemption not so claimed is considered waived by the fee payer. In the event that the recorded age 55 and older restriction is breached or otherwise modified within the thirty year period following recording such that a person less than 18 years of age is allowed to reside on a permanent basis in any dwelling unit, the educational facilities impact fee in effect for that dwelling unit at the time of the change of circumstances shall be due and payable.
- (b) *Credits.* Upon the recommendation of the School Board, the Board of County Commissioners may award a credit against the educational facilities impact fees to be assessed on a particular residential development project if the School Board has accepted the offer of a developer to donate

land and/or construct all or a part of an eligible educational facility shown in the Tentative District Educational Facilities Plan or appropriate to the implementation thereof. The amount of credit awarded shall not exceed the appraised value of donated land at the time of donation or the actual cost of constructing the educational facility. The Board of County Commissioners may require appraisals, engineering and construction documentation, and competitive bid documents to determine the amount of credit awarded.

- (1) No credit shall be granted for any costs, contribution, payment, construction or land received by the School Board of Brevard County if said costs, contribution, payment, construction or land dedication is received or made before a credit agreement is approved by the Board of County Commissioners and fully executed by all applicable parties. Any claim for credit not so made and approved shall be deemed waived.
 - (2) Credit shall only be awarded for the construction of or land donations for eligible educational facilities.
 - (3) To the extent not waived by the provisions of § 62-933(b)(1) above, when a development of regional impact (DRI) development order includes exactions for eligible educational facilities or sites, the Board of County Commissioners shall award the developer a credit against the educational facilities impact fees assessed within the DRI in an amount equivalent to the value of the exactions at the time that they were accepted by the School Board.
 - (4) When an existing residential use is demolished and replaced by a different type of residential use, the fee payer shall be entitled to a redevelopment credit. The redevelopment credit shall be calculated as the dollar amount difference between the educational impact fee rate for the new use and the educational impact fee rate for the demolished use as established by Section 62-927. In the event that the educational impact fee rate for the demolished use exceeds the educational impact fee rate for the new use, no refund shall be given.
- (c) *Incentives.* As an incentive to promote the construction of new housing that is affordable to lower income households, the Board of County Commissioners establishes the following incentives, subject to the availability of budgeted funds, on a first-come, first-served basis.
- (1) For homebuyers with a family income of at least 66% but not more than 80% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 25% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 75% of the educational facilities impact fee according to the provisions of this ordinance.
 - (2) For homebuyers with a family income of at least 51% but not more than 65% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 50% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 50% of the educational facilities impact fee according to the provisions of this ordinance.

- (3) For homebuyers with a family income of not more than 50% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 75% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 25% of the educational facilities impact fee according to the provisions of this ordinance.
- (4) A property owner applying to qualify for the incentive loan provided for in this subsection shall, upon County approval of the application, execute a notice of assessment setting forth the balance of the educational facilities impact fee that remains unpaid. The notice shall be in recordable form and the County shall record the notice in the official records of the county. Upon execution, the notice of assessment shall constitute a lien for the balance of the educational facilities impact fee that is due under the terms and conditions of this subsection. If the property owner qualifying for the incentive provided for herein continuously resides on the qualified property for the full ten year term thereby causing the forgiveness of the loan in accordance with this subsection, the County shall cause a release of lien to be recorded. If the property owner qualifying for the incentive ceases to continuously reside on the qualified property at any time, the balance of the impact fee loan outstanding at that time shall be due and payable by the owner of the qualified property or, in the case of a sale, by their successor in title to the qualified property.

Section 7. **Severability.** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 8. **Conflicting Provisions.** In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 9. **Area Encompassed.** This ordinance shall apply to both the unincorporated area of Brevard County and to the incorporated areas of Brevard County.

Section 10. **Effective Date.** This ordinance shall become effective on January 4, 2016. Owners of residential property, as defined herein, who have submitted a complete application for a building permit for construction of residential buildings by Brevard County or any municipality prior

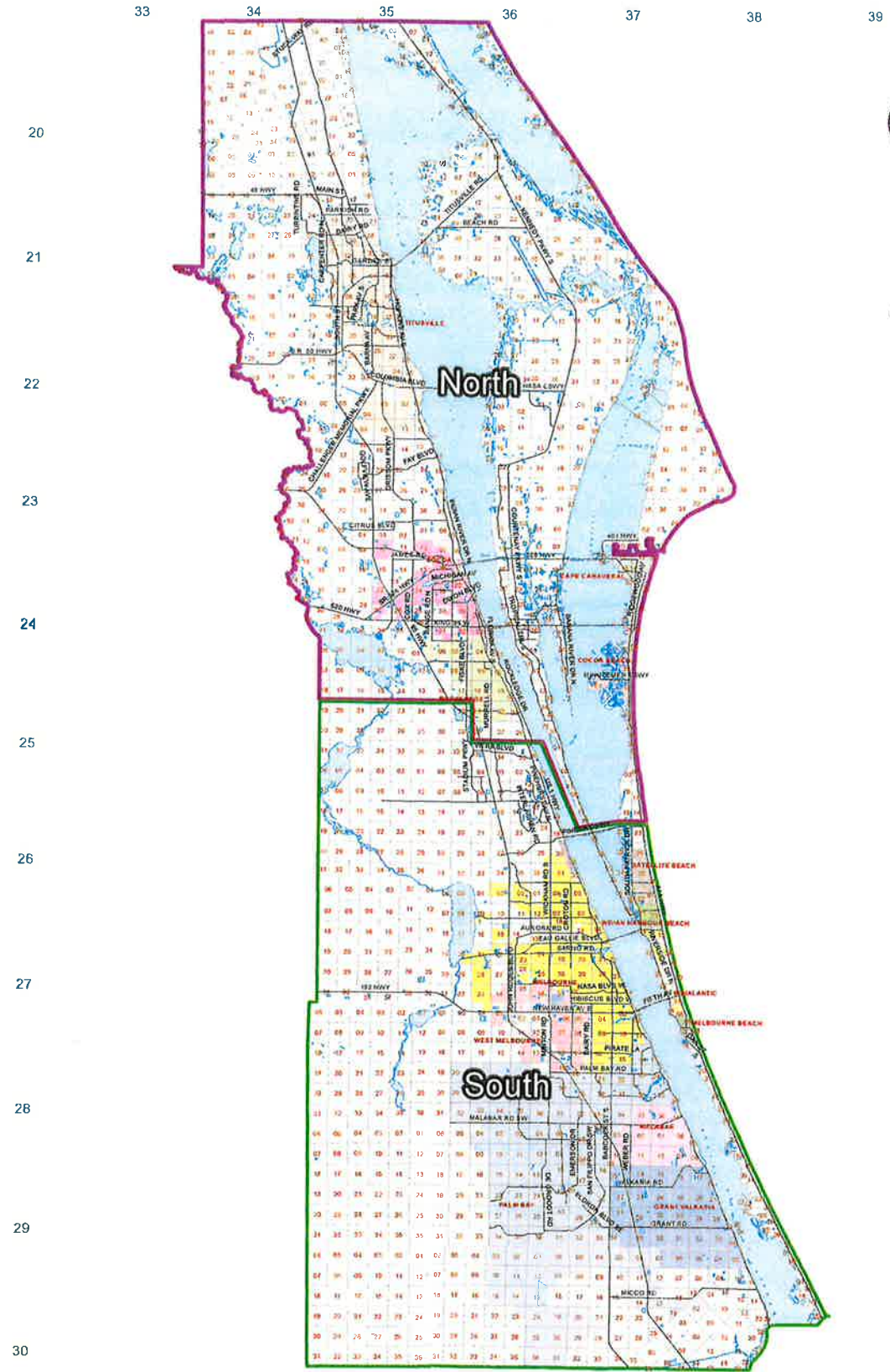
to the effective date of this ordinance shall be entitled to utilize the existing educational facilities impact fee rate for said property, provided that when work or activities are authorized, they are pursued in the timely manner required by issuing jurisdiction. This ordinance shall not apply to any property if the County determines that the owner, as of January 4, 2016, has entered into a bona fide contract in which that owner has agreed to pay the cost of constructing or financing new improvements for which an impact fee would have to be paid subsequent to the adoption of this ordinance and has provided a copy of the contract to the County Manager by the close of business on the effective date of this ordinance. To qualify as a bona fide contract under this section, the contract must be presented to the County on or before January 4, 2016 and must: (1) include the bona fide buyer's name and the legal description of the residential property to be conveyed to the buyer; (2) be executed by both buyer and seller prior to the effective date and time of this ordinance; and (3) include the sales price and method of payment. The applicant seeking exclusion from the ordinance must also provide evidence that bona fide consideration was paid to secure the agreement. Any change made to the contract after the effective date of this ordinance that revises the legal description of the property shall require payment of the educational facilities impact fee.

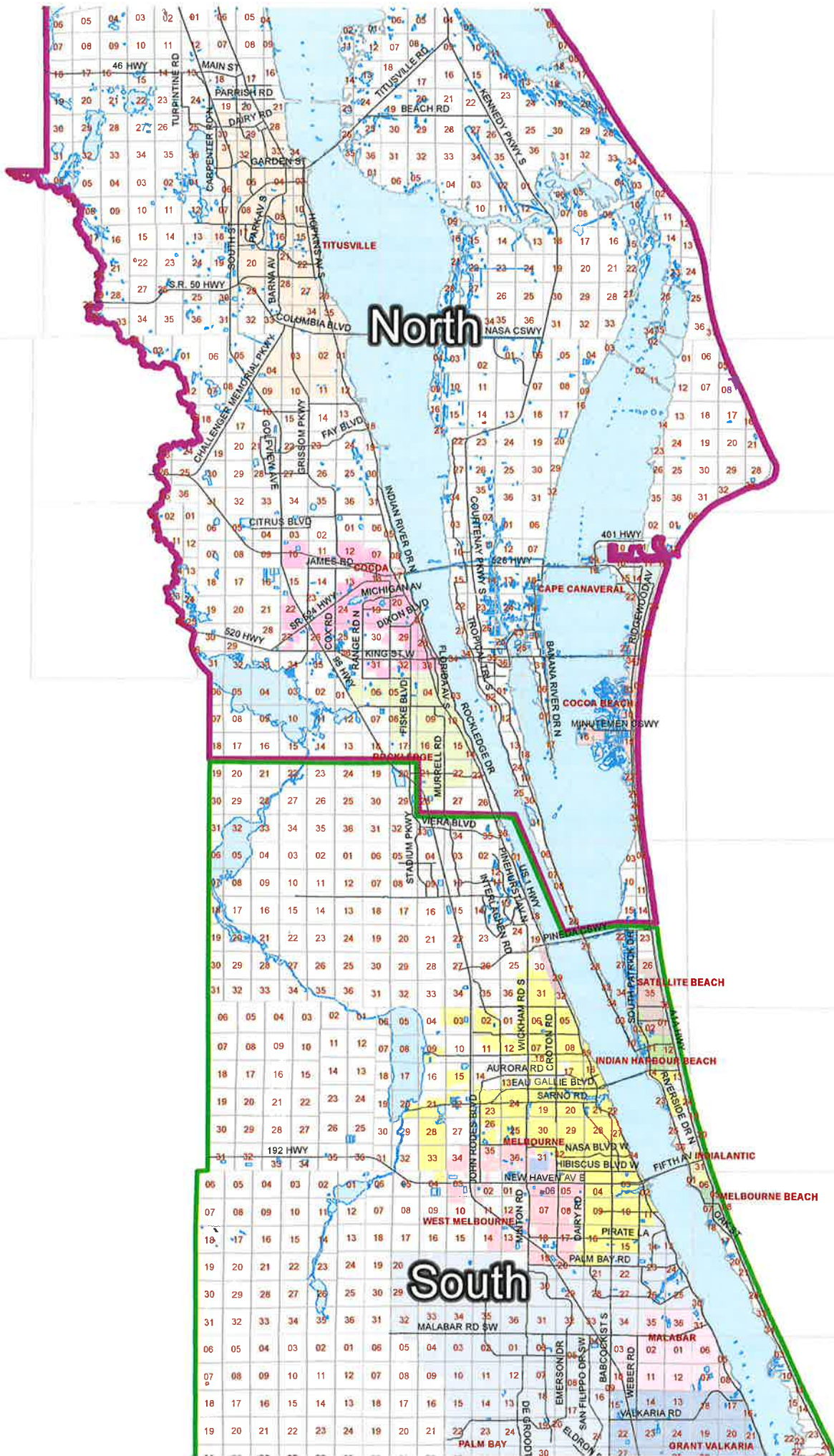
DONE AND ADOPTED in regular session, this sixth day of October, 2015.

A

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Brevard County





North

South