

**F. Consent Agenda - Planning and Development  
ITEM 3.**



**AGENDA REPORT  
January 22, 2019**

**Approval Re: Amended Interlocal Agreement between Brevard County and  
the School Board**

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**SUBJECT:**

Approval Re: Amended Interlocal Agreement between Brevard County, Florida and the School Board of Brevard County, Florida providing for funding of new or expanded public educational facilities with Educational Facilities Impact Fees.

**FISCAL IMPACT:**

There will be no fiscal impact resulting from approval of this agreement.

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

It is requested that the Board consider approval of this amended agreement and if approved authorize the Chair to execute the agreement on behalf of the County.

**SUMMARY EXPLANATION and BACKGROUND:**

At the request of the Board of County Commissioners, an internal audit of the Educational Facilities Impact Fee program was conducted in 2013 and 2014. One of the recommendations of the internal auditors was to update the interlocal agreement between the Board of County Commissioners and the School Board after the Brevard County Impact Fee Update Study was completed and implemented.

The update was completed in 2015 and the Board of County Commissioners adopted Ordinance 16-19 in October 2016 to implement the Educational Facilities Impact Fee component of the update study. The School Board staff and County staff have now completed the revisions necessary to address the recommendations of the internal auditors and the provisions of Ordinance 16-19.

The specific areas amended include clarification of the use of Educational Impact Fees to pay debt service used to fund eligible public educational facilities, periodic remittances of Educational Impact Fees to the School Board and consistency of the interlocal with the Educational Facilities Impact Fee Ordinance (16-19) regarding the number of benefit districts and the use of impact fees for the administration of the impact fee program.

**CLERK TO THE BOARD INSTRUCTIONS:**

Execute both copies of the amended interlocal and retain one copy for inclusion in the Official Minutes. Return the other copy to Stephen M. Swanke in Planning & Development for transmittal to the School Board and recording.

**ATTACHMENTS:**

**Description**

- ▣ **Amended Interlocal Agreement between Brevard County & the School Board**



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

January 23, 2019

**MEMORANDUM**

TO: Tad Calkins, Planning and Development Director Attn: Steve Swanke

RE: Item F.3., Amended Interlocal Agreement with School Board of Brevard County  
Providing for Funding of New or Expanded Public Educational Facilities with Educational  
Facilities Impact Fees

The Board of County Commissioners, in regular session on January 22, 2019, approved and authorized the Chair to execute Interlocal Agreement with Brevard County School Board providing for funding of new or expanded public educational facilities with Educational Facilities Impact Fees. Enclosed is a fully-executed Interlocal Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration



BOARD OF COUNTY COMMISSIONERS

**Planning & Development Department**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

**Inter-Office Memo**

TO: Tammy Rowe, Deputy Clerk  
Clerk to the Board

FROM: Stephen M. Swanke, Program Manager  
Planning & Development Department

DATE: January 22, 2019

SUBJECT: Execution of Amended Interlocal Agreement with the School Board (Item F.3)

I have attached two originals executed by the School Board. The Board approved this amended agreement as Item F.3 at today's meeting. Please have both documents executed on behalf of the County and return them to Planning & Development for recording and transmittal to the School Board. I will return the recorded original to your office for inclusion in the Official Minutes.

Attachment as noted

# School Board of Brevard County

2700 Judge Fran Jamieson Way  
Viera, Florida 32940-6699

Date: 11/7/2018

Time: 10:27 AM



F A C I L I T I E S      M A N A G E M E N T      S E R V I C E S  
Telephone (321) 633-1000 Ex. 450      Fax (321) 633-4646

## LETTER OF TRANSMITTAL

Date : 11-07-18

**TO: Brevard County Government Center**  
Planning & Development Department  
2725 Judge Fran Jamieson Way, Suite A114  
Viera, Florida 32940

**Project :** Interlocal Agreement  
**Attention :** Steve Swanke  
**RE :** Impact Fee's

**WE ARE SENDING YOU :** ☒ Attached ☐ Under separate cover via \_\_\_\_\_ the following items.  
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications  
☐ Copy of Letter ☐ Change Order \_\_\_\_\_

Units	Date	No.	Description
2			Interlocal Agreement for Education Facilities Impact Fees

### THESE ARE TRANSMITTED as checked below :

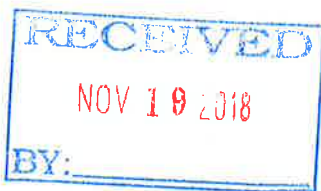
- |   |   |
|---|---|
| <input type="checkbox"/> For approval                 | <input type="checkbox"/> Resubmit 1 copies for approval   |
| <input checked="" type="checkbox"/> For your use      | <input type="checkbox"/> Submit 1 copies for distribution |
| <input type="checkbox"/> As requested                 | <input type="checkbox"/> Return 1 corrected prints        |
| <input type="checkbox"/> For Review and Comment _____ |   |
| <input type="checkbox"/> FOR BIDS DUE _____ 19 ____   | <input type="checkbox"/> PRINTS RETURNED AFTER LOAN TO US |

Remarks : Please sign and return one copy and I will have recorded.

Copy to : File

Signed : Susan Hann

Signature



Susan Hann  
Assistant Superintendent  
Office of Facilities Management Services

AMENDED INTERLOCAL AGREEMENT  
BETWEEN  
BREVARD COUNTY, FLORIDA  
AND THE  
THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA  
PROVIDING FOR FUNDING OF NEW OR EXPANDED  
PUBLIC EDUCATIONAL FACILITIES  
WITH EDUCATIONAL FACILITIES IMPACT FEES

This is an Agreement between: BREVARD COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, through its Board of County Commissioners, hereinafter referred to as "County,"

and

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, the governing body of the School District of Brevard County, Florida pursuant to Article IX, Section 4(b); Constitution of the State of Florida, hereinafter referred to as "School Board".

WHEREAS, the School District of Brevard County is a county-wide system that serves all unincorporated Brevard County and all incorporated municipalities within Brevard County; and

WHEREAS, Brevard County has authorized and received an independently prepared study that analyzed the fiscal impacts of residential development activity on the public primary and secondary educational system and calculated the maximum impact fee that could be imposed on residential development for primary and secondary educational facilities based on currently available data and analysis; and

WHEREAS, the Board of County Commissioners has adopted Ordinance 16-19, the Brevard County Educational Facilities Impact Fee Ordinance which has been incorporated into the Code of Ordinances of Brevard County, Florida as Chapter 62, Article V, Division 7, Sections 62-921 through 62-935;

WHEREAS, the parties are generally authorized to enter into this Interlocal Agreement pursuant to Section 163.01, Florida Statutes, and specifically as it relates to mutual benefits and efficiencies between school boards and local governments pursuant to Section 163.31777(2)(g), Florida Statutes; and

WHEREAS, in order to administer the Ordinance it is necessary that the County and School Board establish and clarify the duties, responsibilities and obligations of the respective parties.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, County and School Board agree as follows:

### **Section 1: Incorporation of Recitals**

The above recitals are true and correct and are incorporated herein by this reference.

### **Section 2: Obligations of the School Board**

- 2.1 Establishment of Benefit District Accounts: The School Board shall establish an accounting procedure that allows the revenues, expenditures and interest earnings for each of the two Educational Facilities Impact Fee Benefit Districts created by the Educational Facilities Impact Fee Ordinance to be separately identified so as to ensure that funds collected in one benefit district are not expended in the other benefit district. Once the accounting procedure is in place, the School Board may deposit all educational facilities impact fee funds in an interest bearing, pooled account.
- 2.2 Expenditure of Educational Facilities Impact Fees: The School Board shall expend educational facilities impact fees received from the County and the interest accrued from those fees, exclusively for the purposes specified in Brevard County Ordinance No. 16-19, which purposes may include the construction of new or expanded public educational facilities and purchase of equipment that are included in the adopted Tentative District Educational Facilities Plan and that will be owned or leased and under the jurisdiction of the School Board. All facilities on which educational impact fees have been expended shall be used for such educational facilities that are reasonably available to and substantially benefit the residents of new residential development in the benefit district where the educational impact fees were collected. The School Board shall not expend educational facilities impact fees for the operation or maintenance of any public educational facility.
- 2.3 Expenditures Limited to Impact Fee Benefit District: The School Board shall expend educational facilities impact fees collected in a benefit district exclusively for new or expanded public educational facilities and equipment that will substantially benefit the residents of the benefit district from which the funds were collected
- 2.4 Funds Utilized For Debt Service: In the event that the School Board issues bonds or similar debt instruments payable from educational impact fees in order to provide advance funding for the construction of new or expanded public educational facilities and equipment that substantially benefit the residents of new residential development in a benefit district, the School Board may expend educational facilities impact fees from each of the substantially benefited Benefit District Accounts for the payment of debt service on such bonds or similar debt instruments provided that the impact fees withdrawn from a Benefit District Account are proportionate to the costs of providing the new educational facilities and equipment necessary to substantially benefit the residents of new development in the Benefit District from which the educational impact fee funds were collected, subject to applicable law.
- 2.5 Impact Fee Advisory Committee: In order to facilitate input from Brevard County and its incorporated municipalities with regard to the appropriation of educational impact fees collected within their respective jurisdictions, towards the development of new or expanded public educational improvement projects, the School Board, during the course

of updating the Tentative District Educational Facilities Plan, shall convene an Impact Fee Advisory Committee for each Benefit District.

- 2.5.1 Membership: The School Board, County and each municipality with jurisdiction over lands within the benefit district and an effective interlocal agreement with the County providing for municipal participation in the educational facilities impact fee program are entitled to appoint one (1) representative to the Impact Fee Advisory Committee. The representatives so appointed must be knowledgeable about residential development activity, the need for public educational facilities within the benefit district, and limitations on the use of impact fees. Representatives may include but are not limited to elected officials, City or County Managers, planners, engineers, attorneys or concerned citizens residing in the jurisdiction. The appointment of an individual to the Impact Fee Advisory Committee by a participating jurisdiction shall be an assurance to all other participating jurisdictions that the appointee meets the requirements of this paragraph.
- 2.5.2 Role of Impact Fee Advisory Committee: The role of the Impact Fee Advisory Committee is to consider the need for and cost of new or expanded public educational facilities within the benefit district to accommodate projected increases in student populations anticipated to result from new residential development as well as projections of impact fee revenues available for appropriation during the time period covered by the Tentative District Educational Facilities Plan in order to make recommendations to the School Board regarding the use of available impact fees for eligible projects.
- 2.5.3 Advisory Committee Recommendations: The recommendations of the Impact Fee Advisory Committees regarding the appropriation of impact fees toward specific public educational improvement projects shall not be binding on the School Board, but the School Board shall regard the Impact Fee Advisory Committee's recommendations as highly persuasive and accord said recommendations great weight in their deliberations.
- 2.5.4 Notice of Meetings: On at least an annual basis, the School Board shall notify the municipalities and the County of the time, date and location of the Impact Fee Advisory Committee meeting for each benefit district.
- 2.6 Donation of Land and Developer Funded Improvements: In the event that the School Board is considering acceptance of an offer by a developer to donate land and/or fund the construction of an a public educational facility shown in the adopted Tentative District Educational Facilities Plan, the School Board shall advise the County of the offer and cooperate with the County in determining the amount of any impact fee credit that may be due.
- 2.7 Conflict of Interest: School Board covenants that no person who presently exercises any functions or responsibilities in connection with the provision of public educational facilities has any personal financial interest, direct or indirect, in the eligible educational facilities and capital improvements during this tenure which would conflict in any manner or degree with the performance of this Agreement, and that no person having any conflicting interest shall be employed or subcontracted. Any possible conflicting interest on the part of School Board or its employees shall be disclosed in writing to the County.



- 2.8 Annual Reports: School Board agrees to furnish to the County Manager by December 1 of each year, status reports identifying information through the end of the School Board's fiscal year. The status reports shall identify the cumulative receipt of educational facilities impact fees by facility, cumulative expenditures for construction of new facilities by facility, cumulative expenditures on debt service by facility, and cumulative interest earned on unexpended funds.

### **Section 3: Obligations of the County**

- 3.1 Administration and Enforcement: It is the obligation of the County to administer all aspects of the ordinance up to the point that the funds are remitted to the School Board for appropriation to specific improvements and to may every reasonable effort to enforce the provisions of the Educational Facilities Impact Fee Ordinance, as it has been adopted and as it may be amended from time to time.
- 3.2 Remittance of Funds: Upon execution of this Agreement and the appropriation of funds to eligible projects in the Tentative District Educational Facilities Plan by the School Board, the County shall remit to the School Board all impact fee revenues and accrued interest that have been collected since the inception of the program less the administrative fee and any refunds that have been given and less any prior remittances. Such remittance shall be made as described below.
- 3.2.1 Remittances: Upon request by the School Board for the distribution of the educational facilities impact fees and approval by the Board of County Commissioners, the collected funds shall be remitted to the School Board within forty-five (45) days of such approval by the Board of County Commissioners.
- 3.2.2 Detail to Be Provided: The County shall provide sufficient detail in the remittance to allow the School Board to properly deposit funds in the correct Benefit District Account.
- 3.2.3 Administration Fee: The County is entitled to retain up to but not more than eight percent (8%) of the amount of educational facilities impact fees collected for administration of the ordinance. In calculating the amount of the administrative fee, the County shall include those expenditures that are reasonably associated with administration of the program. These expenditures may include but are not limited to, compensation and benefits for personnel involved in the administration of the ordinance; supplies and expenses related to administration of the ordinance; costs associated with consulting services for establishment and periodic updates of the ordinance; and those attorney's fees that may be necessary for administration and enforcement of the ordinance. The County acknowledges that it administers other impact fee programs not related to public educational facilities and pledges to consolidate its administrative efforts in order to cost effectively administer all impact fee programs. When shared administrative costs cannot be isolated by specific impact fee program, the County shall prorate those costs based on amount of revenue collected within each program.
- 3.3 Notice of Charter School Request for Educational Facilities Impact Fee Funding: Upon receiving a request from a charter school for educational facilities impact fee funding, the County shall notify the School Board of said request and any public hearings considering such request. The School Board shall have up to forty-five (45) days from the date of the

County's notification to submit to the Board of County Commissioners a letter or report detailing the School Board's position as to whether the charter school's application contains sufficient evidence that the charter school is being created to mitigate the educational impact created by the development of new residential units. The School Board's submission under this provision is not binding on the Board of County Commissioners.

#### **Section 4: Maintenance of Records**

- 4.1 The School Board shall maintain complete and comprehensive records of all funds received from the County and all expenditures of said funds, identified by Benefit District, for a period of seven (7) years from receipt and expenditure to satisfy the refund provisions of Section 62-932 of the Educational Facilities Impact Fee Ordinance.
- 4.2 The County shall maintain complete and comprehensive records of all funds collected from residential development, all exemptions granted, all incentives awarded, any impact fee credit awarded and any refund given for a period of seven years from receipt or award.
- 4.3 The County and the School Board shall have the reciprocal right to review the records of the other as to receipt, allocation and expenditure of impact fees, including records as to bid awards and purchase orders. All such inspections shall be made upon reasonable notice and at a reasonable time and place. Upon a request to review or obtain copies of records by one party to the other hereunder, the party responding to a request for review shall furnish assistance as well as copies of appropriate records for the project to the requesting party.

#### **Section 5: Indemnification**

- 5.1 To the extent allowed by law and subject to the provisions set forth in Section 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

#### **Section 6: Independent Contractor**

- 6.1 The School Board is an independent contractor under this Agreement. Services provided by the School Board are subject to supervision by the School Board and employees or service providers shall not be deemed officers, employees, or agents of Brevard County.

- 6.2 Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of School Board, which shall not conflict with County, or state rules or regulations relating to the use of educational facilities impact fees.

## Section 7: Entire Agreement

- 7.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the disbursement matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written regarding disbursements unless specifically incorporated into this agreement by writing.

## Section 8: Notices

- 8.1 Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. The parties designate the following as the respective places for giving of notice to-wit:

For County: County Manager  
Board of County Commissioners  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940

For School Board: Superintendent  
School Board of Brevard County  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940

## Section 9: Amendments

- 9.1 This agreement may be amended by mutual agreement of the parties or the County may, by ordinance, amend this Agreement if required by state law in order to conform with state mandates, guidelines, directives, and objectives relating to the use of educational facilities impact fees. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners. Such amendment will not affect specific activities commenced under this agreement prior to amendment, which were in compliance at the time of commencement. School Board shall be notified, where a public hearing or other notice is required by law, by individual written notice furnished pursuant to Section 8.1. After adoption of any required ordinance amendment, such adoption and filing with the Secretary of State shall constitute notification of an official amendment to this agreement. No other modification, amendment or alteration in the terms or conditions contained

herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### **Section 10: Term of Agreement**

- 10.1 This agreement shall commence on the day that the Educational Facilities Impact Fee Ordinance becomes effective or on the day that this agreement has been approved and executed by both parties, whichever is later. This agreement shall remain in effect until it has been terminated pursuant to Section 11 below.

#### **Section 11: Termination**

- 11.1 In the event that the County repeals the Educational Facilities Impact Fee Ordinance, this agreement shall remain in effect until all funds collected by the County under the provisions of the ordinance have been disbursed to the School Board and the School Board has notified the County that all disbursed funds have been expended on eligible improvements.
- 11.2 In the event that the School Board determines that the funds collected under the provisions of the Educational Facilities Impact Fee Ordinance are no longer needed by the School Board to provide needed public educational facilities, the School Board shall request that the County repeal the Ordinance and terminate this Agreement pursuant to Section 11.1 above.
- 11.3 In the event of termination, upon request by the County, copies of all finished or unfinished documents, data studies, surveys, drawings, maps, models, reports prepared, and any other like documents secured by School Board with Educational Facilities Impact Fee Trust Funds under this Agreement shall be provided to the County.

#### **Section 12: Severability**

- 12.1 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

#### **Section 13: Governing Law**

- 13.1 The validity, construction and enforcement of and the remedies under this agreement shall be governed in accordance with the laws of the State of Florida. Venue of any proceeding shall be in Brevard County, Florida, and any trial shall be non-jury.

#### **Section 14: Attorney's Fees**

- 14.1 In the event any litigation arises out of this Agreement or under this Agreement, each party shall bear its own attorney's fees and costs.

#### **Section 15: Counterparts**

- 15.1 This agreement may be executed in several counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the County and School Board by their duly authorized representatives on the respective dates below.

**BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA**



KRISTINE ISNARDI

ATTEST:



Scott Ellis, Clerk

As approved by the Board of County Commissioners on:

STATE OF FLORIDA  
County OF BREVARD

The foregoing instrument was acknowledged before me this 22 day of Jan., 2019 by K. ISNARDI Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

  
NOTARY PUBLIC - State of Florida  
DEBORAH W. THOMAS

**SCHOOL BOARD OF  
BREVARD COUNTY, FLORIDA**



John W. Craig, Chairman


ATTEST:

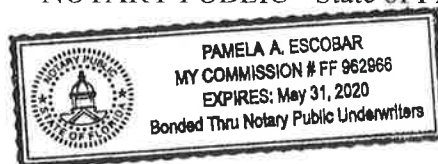
  
Mark W. Mullins, Ed.D, Superintendent

Date: 23 OCT, 2018

STATE OF FLORIDA  
County OF BREVARD

The foregoing instrument was acknowledged before me this 23rd day of October, 2018 by John W. Craig, Chairman of the School Board of Brevard County, Florida, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

APPROVED AS TO FORM:  
  
2018 Revision for BS

  
NOTARY PUBLIC - State of Florida

ORDINANCE # 16- 19

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 OF JANUARY 2, 2017.

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

Officially filed with the Secretary of State October 5, 2016

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 to read as shown herein:

**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 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 to read as shown herein:

**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	\$5,096.50
Attached Residential Dwelling	\$1,940.50
Manufactured Home or Mobile Home	\$1,256.50

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 to read as shown herein:

**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.

(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 to read as shown herein:

**Sec. 62-929. Districts established.**

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

**Benefit District 1**

North	Volusia County Line
South	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.
East	Atlantic Ocean
West	Volusia, Orange & Osceola County Line

**Benefit District 2**

North	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.
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 to read as shown herein:

**Sec. 62-930. Trust fund.**

- (a) There is hereby established an educational facilities impact fee trust fund for each of the 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.
  - (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 2, 2017. Owners of residential property, as defined herein, who have been issued 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.

DONE AND ADOPTED in regular session, this fourth day of October, 2016.

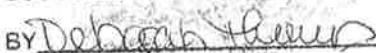
ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Scott Ellis, Clerk

By:   
\_\_\_\_\_  
Jim Barfield, Chairman

Approved by the Board on October 4, 2016

STATE OF FLORIDA  
COUNTY OF BREVARD  
This is to certify that the foregoing  
is a true and current copy of **ORDINANCE**  
**NO. 16-19** witness my hand  
and official seal this **4** day of  
**October** 20**16**  
SCOTT ELLIS, Clerk of Circuit Court  
BY  D.C.