

## LEE COUNTY ORDINANCE 08-22

AN ORDINANCE AMENDING CHAPTER 2 OF THE LEE COUNTY LAND DEVELOPMENT CODE, ARTICLE VI (IMPACT FEES), DIVISION 6, SCHOOL IMPACT FEES; PROVIDING FOR AN AMENDMENT TO SECTION 2-405, COMPUTATION OF AMOUNT; AND SECTION 2-407, PAYMENT; AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND EFFECTIVE DATE.

WHEREAS, the Florida Constitution requires that adequate provision be made by law for a uniform system of free public schools; and,

WHEREAS, Lee County is constituted as a separate school district, and the School Board is empowered by law to operate, control, and supervise all free public schools in the district; and,

WHEREAS, Florida Statutes, Section 235.193, and Lee County Comprehensive Land Use Plan (Lee Plan), Policy 66.1.1., requires the coordination and planning between school boards and the county commission to ensure that plans of public education facilities are coordinated in time and place with plans for residential development and other necessary public services; and,

WHEREAS, Lee Plan Objective 66.1. requires the County to cooperate with the Lee County District Board of Education to ensure that school locations are consistent with County growth policies and the needs of the future population; and,

WHEREAS, Lee Plan Policy 158.5.1. requires the County to coordinate with and assist the Lee County School Board in the orderly and rational expansion of educational facilities that enhance economic growth and a desired quality of life; and,

WHEREAS, in order to maintain appropriate levels of service, Lee County District School System must expand the capacity of the system to accommodate new development in the District. This expansion of capacity is necessary to promote and protect the public health, safety, and welfare of the residents of Lee County; and,

WHEREAS, the County desires to raise funds to pay for the public school system, which serves the municipalities as well as the unincorporated areas of the County; and,

WHEREAS, under Florida Statutes, Section 163.3202, Florida counties are encouraged to adopt innovative land development regulations that include, among other provisions, impact fees; and,

WHEREAS, Lee Plan Policy 2.3.2. provides that impact fees may be used to defray the cost of providing and expanding services and facilities that benefit new development; and,

WHEREAS, the imposition of a school impact fee is one method of ensuring that new development bears a proportionate share of the capital cost of educational facilities necessary to accommodate new development; and,

WHEREAS, Lee Plan Policy 66.1.3. provides that County will continue to maintain and regularly update a school impact fee program; and,

WHEREAS, the imposition of a school impact fee in Lee County must be pursued in order to promote and protect the public health, safety, and welfare; and,

WHEREAS, Lee County has agreed to adopt an ordinance providing for the imposition of a school impact fee in Lee County for the benefit of the School District of Lee County; and,

WHEREAS, as a Charter County, Lee County has the power to impose impact fees Countywide to fund capital facilities provided on a Countywide uniform basis; and,

WHEREAS, it is the County's intent to have the School Impact Fee Ordinance applied Countywide; and,

WHEREAS, the proposed impact fee is derived from and based upon, but does not exceed, the cost of providing for the acquisition of new school sites, the expansion and equipping of existing educational facilities, and the construction and equipping of new educational facilities necessitated by new development for which the impact fee is imposed; and,

WHEREAS, the educational impact fee study prepared for the School District of Lee County by Duncan Associates, in association with Dr. James C. Nicholas, sets forth a reasonable methodology and analysis for the determination of impact of new residential development on the need for and cost of additional educational facilities in the Lee County School District; and,

WHEREAS, the School Impact Fee Ordinance was adopted by the BOCC in 2001; and,

WHEREAS, the adoption of the ordinance triggered a challenge to the legality of the methodology utilized to set the fee schedule; and,

WHEREAS, the County successfully defended the challenge to the legality of the School Impact Fee; and,

WHEREAS, Section 2-405(d) contemplates the periodic update to the fee schedule.

WHEREAS, Florida Statutes, Section 163.31801, the "Florida Impact Fee Act," requires that the calculation of the impact fee be based on the most recent and localized data; and,

WHEREAS, the School Impact Fee Ordinance was amended in 2005 to update the fee schedule; and,

WHEREAS, Duncan Associates updated the educational impact fee study in 2008 using the best available, recent localized data and has recommended revisions to the fee reflected below.

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

**SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2**

Lee County Land Development Code Chapter 2, Article VI, is amended as follows:

**CHAPTER 2  
ARTICLE VI. IMPACT FEES  
DIVISION 6. SCHOOL IMPACT FEES**

**Sec. 2-405. Computation of amount.**

- (a) At the option of the Feepayer, the amount of the school impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home refers to the number of mobile homes or mobile home park sites that are permitted by the applicable final development order or mobile home move on permit as appropriate.

<i>Land Use Type</i>	<i>School Impact Fee per Unit</i>
Single-family residence	\$4,309 4,116
Multiple-family building, duplex, two-family attached or townhouse	\$1,704 1,624
Mobile home	\$ 982 936

- (b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or mobile home park development order, the school impact fee will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.
- (c) If the school impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original Feepayer or collected by the county, whichever is applicable. If school impact fees are owed, no municipal or county permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until impact fees are paid. The county may bring any action permitted by law or equity to collect unpaid fees.
- (d) The impact fee schedule set forth in Section 2-405(a) will be administratively reviewed and re-analyzed every three years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule consistent with the results of the review and re-analysis.

**Sec. 2-407. Payment.**

- (a) The Feepayer must pay the school impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit, or mobile home park development order for which the fee is imposed, except as provided in section 2-412. No building permit, mobile home move-on permit or mobile home park development order may be issued by the county or by any municipality until the impact fee has been paid, except as provided in section 2-412.
- (b) In compliance with Florida Statutes Section 163.31801, the fee schedule will take effect December 31, 2008.
- ~~(b) The fee schedule in effect prior to January 1, 2006, will remain in effect until the new fees take effect as follows:~~

- ~~(1) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted on or before December 31, 2005, will be assessed an impact fee based upon the fee schedule applicable on December 31, 2005, but only if the building permit or mobile home move-on permit is issued on or before March 31, 2006.~~
- ~~(2) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after December 31, 2005, or any building permit or mobile home move-on permit or development order issued after March 31, 2006, will be subject to the amended impact fee schedule.~~
- ~~(3) After March 31, 2006, the Director may accept payment according to the fee schedule in effect prior to January 1, 2006 only if the following conditions are met. The Director's decision is not subject to appeal under §34-145 of this code.
  - ~~a. The application for the permit or development order must have been properly submitted and sufficient for review on or before December 31, 2005; and,~~
  - ~~b. The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond March 31, 2006; and,~~
  - ~~c. The applicant submits a written request to the Director specifying the reasons for the request; and,~~
  - ~~d. The Director's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and,~~
  - ~~e. The ability and authority to accept payments under this subsection will terminate on April 30, 2006.~~~~

**SECTION TWO: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

**SECTION THREE: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners

further declares its intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

**SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or re-lettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or re-lettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager, or his designee, without the need for a public hearing.

**SECTION FIVE: EFFECTIVE DATE**

The ordinance will take effect upon filing with the Secretary of State.

**THE FOREGOING ORDINANCE** was offered by Commissioner Hall, who moved its adoption. The motion was seconded by Commissioner Mann. When put to a vote, the vote was as follows:

ROBERT P. JANES	Aye
BRIAN BIGELOW	Aye
RAY JUDAH	Aye
TAMMY HALL	Aye
FRANK MANN	Aye

**DULY PASSED AND ADOPTED** this 23<sup>rd</sup> day of September 2008.

ATTEST:  
CHARLIE GREEN, CLERK

By: *Charlie Green*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

*Ray Judah*  
Ray Judah, Chairman

APPROVED AS TO FORM:

By: *Robert Spiekerman*  
Robert Spiekerman  
County Attorney's Office





## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

**KURT S. BROWNING**  
Secretary of State

October 2, 2008

Honorable Charlie Green  
Clerk of Court  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 29, 2008 and certified copies of Lee County Ordinance Nos. 08-22 and 08-24, which were filed in this office on September 30, 2008.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud  
Program Administrator

LC/srd

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### DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
850.245.6600 • FAX: 850.245.6735 • TDD: 850.922.4085 • <http://dlis.dos.state.fl.us>

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