

LEE COUNTY ORDINANCE 01-21

AN ORDINANCE AMENDING CHAPTER 2 OF THE LEE COUNTY LAND DEVELOPMENT CODE, ARTICLE VI (IMPACT FEES) TO ENACT AN ORDINANCE APPLICABLE COUNTYWIDE TO IMPOSE SCHOOL IMPACT FEES ON RESIDENTIAL DEVELOPMENT WITHIN THE INCORPORATED AND UNINCORPORATED AREAS OF LEE COUNTY; PROVIDING FOR A DIVISION 6, SCHOOL IMPACT FEE, PROVIDING FOR STATUTORY AUTHORITY; APPLICABILITY; INTENT AND PURPOSE, DEFINITIONS; IMPOSITION OF FEE; COMPUTATION OF FEE; INDEPENDENT FEE CALCULATIONS; PAYMENT; TRUST FUND ACCOUNTS; USE OF FUNDS; REFUNDS; PREPAYMENT OF FEES; EXEMPTIONS; CREDITS; APPEALS; ENFORCEMENT, PENALTY, FURNISHING FALSE INFORMATION; AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENERS 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 46.1.1 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 46.1 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 110.5.1 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 46.1.3 provides that county staff, together with economic consultants and the school district, will develop an impact fee program to address the capital costs for schools and present it to the Board of County Commissioners; 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.

**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 to adopt a new Division pertaining to the imposition of countywide school impact fees as follows:

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

**Sec. 2-400. Statutory authority.**

The Board of County Commissioners has the authority to adopt this division pursuant to article VIII of the constitution of the state, F.S. ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16).

**Sec. 2-401. Applicability of division.**

This division applies in the unincorporated area of the county and within all municipalities within the county. Municipalities are required to collect impact fees from new development within their jurisdictions.

**Sec. 2-402. Intent and purpose of division.**

- (a) This division is intended to implement and be consistent with the Lee Plan.
- (b) The purpose of this division is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide adequate public educational facilities in the county as contemplated by the Lee Plan.

**Sec. 2-403. Definitions.**

The following words, terms and phrases, when used in this division, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Building official* means that officer who is so defined in chapter 6, article II. Within any municipality, the term "building official" means that person whose duties and authority are similar to that of the county's building official, regardless of the title given such person.

*Building permit* means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a residential building or structure. In the case of a change in use or occupancy of an existing building or structure, the term specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance. The terms "building permit" and "certificate of occupancy permit" also mean those municipal permits that are equivalent to these county permits, regardless of the names by which they are called within a municipality.

*Capital improvement* means land acquisition, equipment purchase, site improvements, off-site improvements and construction associated with new or expanded public elementary or secondary schools and support facilities. Capital improvements do not include maintenance and operations.

*County manager* means the county manager, or the county official that the county manager may designate to administer the various provisions of this division.

*Duplex* has the same meaning given it in chapter 34.

*Feepayer* means a person applying to the county, or to any participating municipality, for the issuance of a building permit, mobile home move-on permit or mobile home park development order for a type of land development activity specified in section 2-405(a), regardless of whether the person owns the land.

*Lee Plan* means the county comprehensive plan adopted pursuant to F.S. ch. 163, as amended.

*Mobile home* has the same meaning given it in chapter 34.

*Mobile home move-on permit* means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. It also includes a permit authorizing the tie down of a park trailer in a mobile home zoning district.

*Multiple-family building* has the same meaning given it in chapter 34.

*Single-family residence* has the same meaning given it in chapter 34.

*Townhouse* has the same meaning given it in chapter 34.

*Two-family attached* has the same meaning given it in chapter 34.

**Sec. 2-404. Imposition.**

- (a) Except as provided in section 2-412, any person who seeks to develop land by applying to the county or any municipality for the issuance of a building permit, mobile home move-on permit or mobile home park development order for the purpose of making an improvement to land for one of the uses specified in section 2-405, is required to pay a school impact fee in the manner and amount set forth in this division.
- (b) No building permit, mobile home move-on permit or mobile home park development order for any activity requiring payment of an impact fee pursuant to section 2-405 may be issued by the county or any municipality until the school impact fee required by this division has been paid.
- (c) In the case of structures or mobile homes that are moved from one location to another, a school impact fee will be collected for the new location if the structure or mobile home constitutes one of the land development uses listed in section 2-405, regardless of whether school impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure or mobile home so moved is replaced by an equivalent use, no school impact fee is owed for the replacement use. In every case, the burden of proving past payment of school impact fees or equivalency of use rests with the Feepayer.

**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	\$2,232
Multiple-family building, duplex, two-family attached or townhouse	\$691
Mobile home	\$425

- (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. 2-406. Independent fee calculation.**

- (a) If the person applying for a building permit, mobile home move-on permit or mobile home park development order opts not to follow the fee schedule set forth in section 2-405 of this division, then that person has the option to submit an independent fee calculation study in accordance with this section.
- (b) Submittal of an independent fee calculation study by the Feepayer does not exempt the Feepayer from paying the school impact fees prior to the issuance of a building permit, mobile home move-on permit, or mobile home park development order as those terms are defined.
- (c) The Feepayer must inform the county manager, the superintendent of schools, and the municipality, if applicable, in writing, of the intent to submit an independent fee calculation study before the issuance of the permits described in subsection 2-406(a). The county manager will then schedule a pre-application meeting with the Feepayer.
- (d) Before beginning the independent fee calculation study, the Feepayer or representative will attend a pre-application meeting with the county manager and superintendent of schools. The purpose of the pre-application meeting is to discuss the procedures for preparation of the independent fee calculation study, the methodology to be employed, and the standards to be met.

- (e) The county manager will prepare a written summary of the results of the pre-application meeting regarding methodology, required forms, documentation or procedures (which may not constitute a waiver of ordinance provisions). The county manager will send a copy of this summary to the Feepayer, the Lee County School Board and the municipality, if applicable. The Feepayer must provide written confirmation as to receipt and acceptance of the summary to the county manager.
- (f) If the Feepayer wishes to waive the pre-application meeting, it must be done in writing. Feepayers who waive the pre-application meeting waive the right to raise methodological or procedural issues regarding the study at a subsequent time.
- (g) The independent fee calculation study must measure the impact of the specific development proposed on the Lee County Public Schools educational system.
- (h) The independent fee calculation study must follow the methodologies and formats agreed upon during the pre-application meeting and be in accord with the documentation or methodology required by this section.
- (i) The methodology used to prepare the independent fee calculation must be consistent with the methodology used to develop the generalized impact fee schedule and verify that the projected impact on the Lee County Public Schools educational system of the proposed development is less than the projected impact used in establishing the fee schedule in section 2-405 because of the uniqueness in character of the proposed development.
- (j) The independent fee calculation study must be prepared and presented by a qualified professional. The methodology must be consistent with best professional practice and support the central claim of the study. The study must provide all necessary supporting documentation and information. Failure to adhere to best professional practice standards is a basis for rejection of the study. The Feepayer's submission must certify that the study complies with best professional practices.
- (k) The Feepayer must submit the study to the county manager who will forward the study to the Lee County School Board and the municipality, if applicable.
- (l) The county manager will have 30 days from the date the study is received to provide written notice to the Feepayer of deficiencies or defects in the study, to approve the study and authorize an appropriate fee adjustment or to reject the conclusions of the study and deny the fee adjustment. This notice must be sent certified mail, return receipt requested. If this notice is not given within 30 days, the study will be considered sufficient and the fee adjusted as if the study had been approved. If the study is found defective or deficient the 30 day review period will begin again with the submission of a new or modified study. If the Feepayer does not respond to the county manager regarding a finding of deficiency within 30 days of the date notice of a deficiency is sent, the county manager will consider the

independent fee calculation study withdrawn and all claims to a fee adjustment waived. All permits described in subsection 2-404(a) subsequently applied for must be accompanied by the school impact fees established by the fee schedules. The 30 day sufficiency review will begin when the county manager receives and date stamps the independent fee calculation study.

- (m) During the initial 30-day period, the Lee County School Board will also review the independent fee calculation study for sufficiency, methodology, technical accuracy, and findings. Thereafter, the School Board will make recommendations concerning the appropriate amount of the school impact fees to the county manager. If the project at issue is located within one of the incorporated areas, the municipality may also review the study and provide recommendations to the county manager within the initial 30 day period.

Once the county approves the independent fee calculation study and establishes the amount of the impact fee adjustment, the adjusted school impact fee will relate back to the date of the pre-application meeting. Fees paid after the pre-application meeting according to the fee schedule will be adjusted to reflect the fee approved by the county pursuant to the study. The Feepayer will receive a refund for the difference between the fee schedule and the approved fee established by the study. Refunds will be in the form of cash or school impact fee credits, depending on the original method of payment. There will be no refund of fees paid prior to the pre-application meeting. If the Feepayer waives the pre-application meeting, the adjusted school impact fee will relate back to the date the study is found sufficient for review by the director.

- (n) It is the Feepayer's responsibility to claim a reduction in school impact fees on the basis of an approved independent fee calculation study, at the time of application for a building permit, mobile home move-on permit or mobile home park development order. No claim to a reduced fee will be accepted in advance of the approval of an independent fee study where one is required. The Feepayer must present documentation enabling the staff of the Division of Codes and Building Services or the Building Official of the municipality to verify this claim. Where the Feepayer waived the pre-application meeting, fees paid according to the school impact fee schedule after the study is found sufficient for review will be adjusted to reflect the fee approved by the County pursuant to the study.

**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 lieu of cash, up to 100 percent of the school impact fee may be paid with credits created in accordance with the provisions of subsection 2-413.
- (c) School impact fees collected by municipalities must be remitted to the County at least monthly. The County and the municipality must maintain records for each payment, the name of the Feepayer, the date of payment, the location and description of the property for which the fee was paid, the land use and number of dwelling units for which fees were paid, and the application of any credits or adjustments to the fees otherwise due. This information must be provided to Lee County and the school district in order to ensure proper record keeping for the day to day administration of the school impact fee program and also to ensure that all expenditures comply with requirements of the rational nexus test as defined in Florida case law.
- (d) The county will remit to the School Board, within thirty days following the end of each calendar quarter, all school impact fees collected.
- (e) All funds collected pursuant to this division will be properly identified by the School Board and promptly recorded in the school impact fee capital fund and used solely for the purposes specified in this division.

**Sec. 2-408. Trust fund accounts.**

There is hereby established a school impact fee capital fund account. Funds withdrawn from this account must be used in accordance with the provisions of section 2-409.

**Sec. 2-409. Use of funds.**

- (a) Funds collected from school impact fees must be used for the purpose of capital improvements for educational facilities. Except as provided in subsection (c) of this section, school impact fee collections, including any interest earned thereon, must be used exclusively for capital improvements for educational facilities. These impact fee funds must be segregated from other funds and be expended as provided for in this section. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for educational facilities. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby must be divided and segregated such that the amount of the proceeds reserved for educational

facility purposes bears the same ratio to the total funds collected that the school impact fee funds used or pledged bear to the total funds used or pledged.

- (b) Each fiscal period the Lee County School Board will present a proposed capital improvements program for educational facilities to the Board of County Commissioners. The program must assign funds, including accrued interest, from the school impact fee capital fund to specific educational facility projects. School impact fee funds may only be expended by the School Board according to a capital improvements program that has been approved by the Board of County Commissioners. All funds must be spent in a manner that will benefit the Feepayer.

For example, so long as the School Board maintains a school choice system where students must attend a school within the zone where they reside, then all funds must be spent within the zones where they are collected. Fees collected from one school choice zone may be spent on a capital improvement in another school choice zone only if it can be demonstrated that the improvement will benefit the feepayers in the original school choice zone. For example, the construction of magnet schools and administrative facilities that provide benefits across school choice zones.

At least every three years, the School Board must submit to the County a report summarizing all expenditures of funds and demonstrating that all expenditures comply with requirements of the rational nexus test as defined in Florida case law. The first report will be due three years from the effective date of this ordinance.

- (c) The County, and any municipality collecting school impact fees are entitled to charge the applicant of a permit or development order for which school impact fees are payable under this division, an administrative fee equal to up to three percent of the school impact fees it collects. The administrative fee must be used to offset the costs of administering this division. The administrative fee must be paid in cash.

**Sec. 2-410. Refund of fees paid.**

- (a) If a building permit, mobile home move-on permit or mobile home park development order expires, is revoked or voluntarily surrendered, and therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has commenced, then the Feepayer is entitled to a refund of the portion of the school impact fee that was paid in cash as a condition for its issuance. A three percent administrative fee will be retained as an administrative fee to offset the costs of processing the refund. This administrative fee is in addition to the three percent administrative fee charged at the time of fee payment. No interest will be paid to the Feepayer on refunds due to non-commencement.

- (b) Funds that have not been expended or encumbered by the end of the calendar quarter immediately following ten years from the date the school impact fee was paid, will be returned to the Feepayer, with interest at the rate of six percent per annum, upon application of the Feepayer within 180 days of that date.
- (c) After consulting with the county attorney, the county manager will make all decisions on requests for refunds.

**Sec. 2-411. Pre-payment of Fees.** Prepayment of school impact fees will be accepted by the County or any municipality in accordance with the following:

- (a) Prepayment is specifically required or permitted by: a development order adopted pursuant to F.S. ch. 380; An agreement made by the county pursuant to its home rule powers granted by article VIII of the constitution of the state and F.S. § 125.01; A development agreement made pursuant to F.S. §§ 163.3220-163.3243, the Florida Local Government Development Agreement Act.
- (b) Prepayment is made by certified check or cashiers check accompanied by a letter identifying the amount to be prepaid and the document allowing prepayment delivered to the building official.

**Sec. 2-412. Exemptions.**

- (a) The following are exempted from payment of the school impact fee:
  - (1) The construction of a non-residential building or structure.
  - (2) Dwelling units in subdivisions, mobile home or manufactured housing parks, and multi-family dwellings that are operated as a community for older persons, in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, 42 U.S.C., § 3601 through 3619, that also prohibit persons under the age of 18 years from residing within the dwelling units on the property as a permanent resident. This restriction must be evidenced by a recorded declaration of covenants and restrictions that are not subject to revocation or amendment for a period of at least 30 years from the date of recording. The covenants and restrictions must run with the land.
  - (3) Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
  - (4) The construction of accessory buildings or structures that will not produce additional living units.

- (5) The replacement of an existing lawfully permitted building, mobile home or structure where the original permit was issued prior to December 1, 2001, provided that no additional living units will be produced than those produced by the original use of the land. However, if any such building, mobile home, or structure is destroyed, demolished or removed from the property voluntarily or involuntarily, then any replacement will be required to pay the appropriate impact fee, unless:
    - a. a lawful permit is issued for the replacement within 5 years after such destruction, demolition or removal; and,
    - b. construction commences within said 5-year period; and
    - c. such construction continues in good faith without abandonment, expiration or loss of permits.
  - (6) An amendment to a mobile home park development order, provided that the amendment does not increase the number of mobile home units permitted.
  - (7) A building permit, mobile home move-on permit or mobile home park development order that does not result in an additional living unit.
  - (8) Any development that has already fully mitigated its school impacts as contemplated by this section.
- (b) Exemptions must be claimed by the Feepayer at the time of application for a building permit, mobile home move-on permit or mobile home park development order. Exemptions not so claimed are deemed waived by the Feepayer.
  - (c) The county manager, after consulting with the county attorney, has sole authority to determine whether an exemption described herein is applicable. The county manager's decision may only be appealed in Circuit Court.

**Sec. 2-413. Credits.**

Capital improvements for educational facilities may generate school impact fee credits in amounts to be established pursuant to subsection (a)(2) of this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the county.

- (a) Conditions of credit approval. Credit for educational facility construction or land dedication is subject to the following:
  - (1) A request submitted for educational facility capital improvements by the Feepayer must include cost estimates prepared by qualified professionals to

be used by the county manager in determining the amount of the credit the county manager will recommend be authorized by the Board of County Commissioners.

- (2) Credits for contributions, payments or construction made prior to the effective date of this section will be acknowledged by the county. The person or entity that provided the contribution, payment or construction must file an application for credit within one year of the effective date of this section. No credit will be issued on applications filed thereafter. The application for credit must be submitted and will be reviewed as provided in this section. The amount of the credit for a contribution, payment or construction made prior to the effective date of this section will be the current value of the contribution, payment or construction, less the total amount of school impact fees that would have been owed for the building permits already issued for the project had those permits been subject to the fees specified in section 2-405. The current value will be determined using the Engineering News-Record Construction Cost Index, or an equivalent index if such index is discontinued. Credits for payments or contributions prior to the effective date of this section will not exceed that value of the impact fee required under this division.
  
- (3) Land Dedication. Any person seeking credits for dedication of land must meet with the County Attorney, the School Board Attorney and County Lands staff to seek agreement on appraisal methodology and assumptions before preparing any appraisal for valuation of land to be dedicated. The following documents must be submitted to support an application for school impact fee credits applicable to land dedication for approved school sites:
  - a) a survey of the land to be dedicated, certified by a professional land surveyor or a registered land surveyor, each of whom are licensed in the state;
  - b) a specimen of the deed that will be used to convey title to the Lee County School District;
  - c) an ALTA Form B title insurance policy in an amount equal to the approved value of the credits to be issued. The company issuing the policy must be satisfactory to the county attorney. The title insurance policy must verify that the proffered deed will convey unencumbered fee simple title to the Lee County School District;
  - d) property appraisals prepared by qualified professionals;
  - e) a document from the tax collector stating the current status of the property taxes; and

- f) a resolution of the Lee County School Board stating that the proposed land dedication is acceptable to the school district for use as a future public educational facility.
  - g) In preparing their reports, appraisers will value the land to be dedicated as follows: If the property is subject to a valid agreement, zoning approval or development order prescribing a different valuation, then that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning approval and the zoning condition does not prescribe otherwise, then the property value will be based upon the value of the property as it existed prior to the approval containing the condition of dedication. If the land to be dedicated is not pursuant to a valid agreement, zoning approval or development order prescribing the valuation of property, the property will be valued at the time the School Board agrees to accept the conveyance.
- (4) In all events, the county retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates or property appraisals for the proposed land dedication. In every case, school impact fee credits must be calculated so as to be consistent with F.S. § 380.06(16).
- (b) Timing of Credit Issuance.
- (1) Credits for construction will be created when the construction is completed and accepted by the Lee County School District or when the Feepayer posts a surety, as provided in this subsection, for the costs of construction. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement must be posted with the School Board and made payable to the School Board in an amount equal to 110 percent of the full cost of such construction. If the educational facility construction project will not be constructed within one year of the acceptance of the offer by the School Board, the amount of the security will be increased by ten percent, compounded for each year of the life of the surety.
  - (2) Credits for land dedication will be created when the title to the land has been accepted by the School Board of Lee County and recorded in the official records of the clerk of circuit court in the county. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the County's Official Records Book.
- (c) Transferability. School impact fee credits are transferable.

- (1) Credits may be used to pay or offset school impact fees anywhere in the County or any municipality. However, the county manager and the county attorney must first determine that the improvement for which the credits were issued is a direct benefit to the development where the credits are sought to be used.
  - (2) Transferable credits must be used within ten years of the date created.
  - (3) If school impact fees are increased before credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the Consumer Price Index–All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. If school impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within ten years will be canceled by the Building Official. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.
- (d) Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication prior to the transfer of legal title to the land or improvements in question, and pay the full school impact fees required by this division.
  - (e) Credits must be claimed by the Feepayer at the time of the application for a residential building permit, mobile home move-on permit or mobile home park development order. Credits not so claimed will be deemed waived by the Feepayer.
  - (f) Once used, credits must be canceled and may not be reestablished even if the permit for which they were used expires without construction.

#### **Sec. 2-414. Appeals.**

Unless otherwise provided herein, decisions made by the county manager or his designee, or by the building official, in the course of administering this division may be appealed in accordance with those procedures set forth in chapter 34 of the Lee County Land Development Code for appeals of administrative decisions. Each municipality and the School Board are bound by the results of the administrative appeal. If the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the county, at its expense, unless the municipality elects to provide the defense of the case.

#### **Sec. 2-415. Enforcement of division; penalty; furnishing false information.**

A violation of this division is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the county, or any Feepayer, has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the county manager, the building official or any other official who is charged with the administration of this division on any matter relating to the administration of this division constitute a violation thereof.

**Secs. 2-416 - 2-419. Reserved.**

## **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 relettered 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 relettered 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 on December 1, 2001.



**THE FOREGOING ORDINANCE** was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Janes and, being put to a vote, the vote was as follows:

ROBERT P. JANES	Aye
DOUGLAS ST. CERNY	Aye
RAY JUDAH	Aye
ANDREW W. COY	Aye
JOHN E. ALBION	Aye

**DULY PASSED AND ADOPTED** This 27<sup>th</sup> day of November, 2001.

ATTEST:  
CHARLIE GREEN, CLERK

By: 

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: 

Ray Judah, Vice-Chairman

APPROVED AS TO FORM:

By: 

Donna Marie Collins  
Office of County Attorney

Lee County School Impact Fee Ordinance-DMC

DIVISIONS OF FLORIDA DEPARTMENT OF STATE  
Office of the Secretary  
Division of Administrative Services  
Division of Corporations  
Division of Cultural Affairs  
Division of Elections  
Division of Historical Resources  
Division of Library and Information Services  
Division of Licensing  
MEMBER OF THE FLORIDA CABINET



HISTORIC PRESERVATION BOARDS  
Historic Florida Keys Preservation Board  
Historic Palm Beach County Preservation Board  
Historic Pensacola Preservation Board  
Historic St. Augustine Preservation Board  
Historic Tallahassee Preservation Board  
Historic Tampa/Hillsborough County  
Preservation Board  
RINGLING MUSEUM OF ART

FLORIDA DEPARTMENT OF STATE  
**Katherine Harris**  
Secretary of State  
DIVISION OF ELECTIONS

December 3, 2001

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

Attention: Ruth Frymier, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated November 28, 2001 and Lee County Ordinance No. 01-21, which was filed in this office on November 29, 2001.

Sincerely,

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

Liz Cloud, Chief  
Bureau of Administrative Code

LC/mp

