

LEE COUNTY ORDINANCE 05-25

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 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; 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.

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	\$2,232 4,309
Multiple-family building, duplex, two-family attached or townhouse	\$691 1,704
Mobile home	\$425 982

- (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) 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 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 January 1, 2006.

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

ROBERT P. JANES	AYE
DOUGLAS ST. CERNY	ABSENT
RAY JUDAH	AYE
TAMMY HALL	AYE
JOHN E. ALBION	AYE

DULY PASSED AND ADOPTED This 8th day of November 2005.

ATTEST:
CHARLIE GREEN, CLERK

By: *Charlie Green*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: *W. Hall*
Vice-Chairman

APPROVED AS TO FORM:

By: *Donna Marie Collins*
Donna Marie Collins
Office of County Attorney

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FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State
DIVISION OF LIBRARY AND INFORMATION SERVICES

November 16, 2005

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

Attention: Lisa L. Pierce, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated November 14, 2005 and certified copies of Lee County Ordinance Nos. 05-24 and 05-25, which were filed in this office on November 15, 2005.

Sincerely,

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

Liz Cloud
Program Administrator

LC/mp

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