

ORDINANCE 16-03

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING EDUCATIONAL FACILITIES; PROVIDING A STATEMENT OF PURPOSE AND INTENT; PROVIDING FINDINGS; AMENDING CHAPTER 29, ARTICLE VII OF THE MANATEE COUNTY CODE OF ORDINANCES (ORDINANCE 03-22, AS AMENDED); ADOPTING A NEW SCHEDULE OF EDUCATIONAL FACILITIES IMPACT FEES EFFECTIVE AS OF APRIL 18, 2016, BASED ON THE MOST RECENT IMPACT FEE STUDY COMPLETED BY THE MANATEE COUNTY SCHOOL BOARD IN ACCORDANCE WITH THE FLORIDA IMPACT FEE ACT; AMENDING AND RESTATING CHAPTER 29, ARTICLE VII OF THE CODE, IMPACT FEES, EDUCATIONAL FACILITIES, TO PROVIDE FOR A TITLE, AUTHORITY AND APPLICABILITY; TO PROVIDE FOR LEGISLATIVE FINDINGS, RELIANCE UPON THE IMPACT FEE STUDY, AND INTENT; TO PROVIDE DEFINITIONS; TO PROVIDE RULES OF CONSTRUCTION; TO PROVIDE DETERMINATION OF AMOUNT OF IMPACT FEES; TO PROVIDE FOR IMPACT FEES TO BE IMPOSED; TO PROVIDE METHOD OF PAYMENT OF IMPACT FEES; TO PROVIDE FOR USE OF IMPACT FEE FUNDS; TO PROVIDE FOR REFUNDS OF IMPACT FEES PAID; TO PROVIDE FOR EXEMPTIONS AND CREDITS AGAINST IMPACT FEES; TO PROVIDE FOR APPEALS; TO PROVIDE ORDINANCE REVIEW REQUIREMENTS; AND TO PROVIDE FOR ENFORCEMENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR NOTICE OF THE NEW AND AMENDED IMPACT FEES IN ACCORDANCE WITH THE FLORIDA IMPACT FEE ACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 02-33, codified as Chapter 29, Article VII, Division II of the County's Code of Ordinances (the "School Impact Fee Ordinance"), the County has established a system of impact fees to fund educational facilities needed in order to accommodate new development, based upon an impact fee study and other testimony and evidence entered into the record at the public hearings held for the adoption of the School Impact Fee Ordinance; and

WHEREAS, The School Impact Fee Ordinance and Section 163.31801, *Florida Statutes* (the "Florida Impact Fee Act" or "Act"), require that the County periodically restudy and revise its impact fees to assure that such impact fees are based upon the most recent and localized data as required pursuant to the Act, and

WHEREAS, Florida Statutes Section 163.3202(3) encourages the use of innovative land development regulations which include the use of impact fees to implement the goals, objectives and policies of the County's Comprehensive Plan; and

WHEREAS, Policy 10.1.3.1 of the County’s Comprehensive Plan is to use impact fees as a means of meeting the demands for public facility capital improvements necessitated by new development; and

WHEREAS, Policy 10.1.4 and Policy 10.1.10.1 of the County’s Comprehensive Plan call upon the County to consider changes to the adopted School Impact Fee Ordinance pursuant to the annual reporting process and Growth Management public meeting process; and

WHEREAS, the Manatee County Board of County Commissioners and the Manatee County School Board retained the firm of TischlerBise to study the need to update county educational facility impact fees and to establish new residential development’s proportionate share demand for capital educational improvements needed to serve that new development; and

WHEREAS, TischlerBise has prepared and presented to the Board of County Commissioners and the Manatee County School Board a report titled, “Manatee County School Impact Fee Study,” dated November 3, 2015 (the “Impact Fee Study”); and

WHEREAS, the Board of County Commissioners, in partnership with the Manatee County School Board, wishes to implement reasonable educational facilities impact fees (the “Impact Fees”) to meet the proportionate demand new residential development will create for additional educational facilities, in accordance with the County’s Comprehensive Plan goals, objectives, and policies; and

WHEREAS, the Impact Fee Study establishes the proportionate share costs necessitated by new development’s impacts on capital improvements for educational facilities in Manatee County, in compliance with Florida case law and legislation; and

WHEREAS, pursuant to § 163.31801, Fla. Stat.:

- (a) the Impact Fee Study, and the Impact Fees recommended therein, are based on the most recent and localized data;
- (b) this Ordinance includes procedures for accounting and reporting of Impact Fee collections and expenditures in order to assure compliance with applicable legal standards;
- (c) this Ordinance includes separate accounting funds for educational facilities;
- (d) administrative fees charged pursuant to this Ordinance for the collection of Impact Fees are limited to actual costs;
- (e) the County provided notice at least ninety (90) days prior to the effective date of this Ordinance; and

(f) this Ordinance requires reported data and information from the School District such that the County's chief financial officer may confirm the auditing requirements of § 163.31801, Fla. Stat. have been complied with; and

WHEREAS, the Impact Fees assessed pursuant to this Ordinance are necessary to ensure the public health, safety, and welfare of the residents of Manatee County.

BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida:

Section 1. Purpose and Intent. This Ordinance is enacted to carry out the purpose and intent of and exercise the authority set out in the Local Government Comprehensive Planning and Land Development Regulation Act, Part II of Chapter 163, *Florida Statutes*, and Chapter 125, *Florida Statutes*, as amended.

Section 2. Findings. The Board of County Commissioners relies upon the following findings in the adoption of this Ordinance:

- A. The statements set forth in the above recitals to this Ordinance are true and correct.
- B. The amendments to the County's Code of Ordinances ("Code") set forth herein are necessary to fund capital facilities needed in order to accommodate new development.
- C. Based on forecasts in the Manatee County Comprehensive Plan, new growth and development in the County are expected to continue into the foreseeable future, placing ever-increasing demands on educational facilities ("Educational Facilities") of the Manatee County School Board ("School Board"), requiring expansion of these Educational Facilities to accommodate new growth and development.
- D. Educational Facilities are provided by the School Board to serve the residents of the County.
- E. The adoption of Educational Facilities Impact Fees that impose a proportionate share of the costs the School Board will incur in providing for the expansion of Educational Facilities ensures new growth and development pays a fair share of the costs the School Board will incur in accommodating it.
- F. Pursuant to Article VII, Division II, of Chapter 2-29 of the Code, the County levies Educational Facilities Impact Fees to fund the cost of providing Educational Facilities to accommodate new growth and development.
- G. Historically, Educational Facilities Impact Fees have been based on the most recent and localized data, established by an impact fee study, and therefore have not exceeded the costs incurred by the School Board to accommodate the new development that will pay the Educational Facilities Impact Fees.

- H. The School Board retained TischlerBise to prepare the Impact Fee Study which is incorporated herein by reference.
- I. The Impact Fee Study sets forth reasonable methodologies and analyses for determining the impacts of new development on Educational Facilities.
- J. On November 10, 2015, the School Board adopted Resolution 15-08, accepting the Impact Fee Study and transmitting to the Board a request to implement the Impact Fee as provided in this Ordinance, at an initial rate of fifty percent (50%) of the amount set forth in the Impact Fee Study, to increase to a rate of seventy five percent (75%) after one year, and to a rate of one hundred percent after two years, with a proviso that in the event the electors of Manatee County approve a half-cent sales surtax to fund school construction, the rate of the Impact Fee should return to fifty percent (50%).
- K. Based upon the Impact Fee Study and other testimony and evidence entered into the record at the public hearings held for the adoption of this Ordinance, the Impact Fees levied pursuant to the Code, as amended hereby, are fair, reasonable and roughly proportionate to the capital needs generated by the new development for which such fees shall be levied and do not exceed the costs incurred by the School Board to accommodate the new development that will pay the Impact Fees.
- L. The adoption of Impact Fees that impose a proportionate share of the costs the School Board will incur in providing for the expansion of Educational Facilities implements the Manatee County Comprehensive Plan and ensures new growth and development pays a fair share of the costs the School Board will incur in accommodating it.
- M. There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Ordinance and the Impact Fees that such development will be required to pay.
- N. The School Impact Fee Ordinance creates a system by which Impact Fees paid by new development will be used to finance, defray, or reimburse all or a portion of the costs incurred by the School Board for Educational Facilities in ways that benefit the development that paid each Impact Fee within a reasonable period of time after the Impact Fee is paid.
- O. The School Impact Fee Ordinance creates a system under which Impact Fees shall not be used to replace or rehabilitate existing Educational Facilities.
- P. The standards, assumptions, and Capital Facility Standards in the Impact Fee Study, and the terms and provisions of this Ordinance, are consistent with the Manatee County Comprehensive Plan.
- Q. The Planning Commission as the County's local planning agency held a duly noticed public hearing on December 10, 2015, to review this Ordinance, and adopted a motion

finding this proposed Ordinance consistent with the Comprehensive Plan and recommending its adoption to the Board of County Commissioners.

- R. The Board of County Commissioners held a duly noticed public hearing on January 7, 2016, on this Ordinance to receive public comment and review and consider the Staff Report and the report of the Planning Commission on this Ordinance.
- S. The Board of County Commissioners after considering public comment, the recommendations of the Planning Commission and Planning staff, has found this Ordinance to be consistent with the Comprehensive Plan and in furtherance of the public health, safety and welfare, and has adopted this Ordinance as set forth herein.

Section 3. Amendment of Chapter 29, Article VII, of the Code. Chapter 29, Article VII, of the Code is hereby amended and restated to read in its entirety as set forth in Exhibit “A” to this Ordinance.

Section 4. Applicability. The amendments set forth in Section 3 of this Ordinance shall apply to any Impact-Generating Residential Land Development for which a building permit application is filed on or after April 18, 2016, and for which a certificate of occupancy is issued on or after April 18, 2016.

Section 5. Codification. The publisher of the County’s Code, the Municipal Code Corporation, is directed to incorporate the amendments in Section 3 of this Ordinance into the Code.

Section 6. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

Section 7. Statutory Notice Requirement. Notice of the new and amended impact fees established pursuant to this Ordinance shall be provided in accordance with the requirements of the Florida Impact Fee Act on or before January 15, 2016.

Section 8. Effective Date. This Ordinance shall become effective April 18, 2016.

[SIGNATURE PAGE FOLLOWS]

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida, this the 7th day of January, 2016.



**BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA**

By: _____

Chairman

**ATTEST: ANGELINA COLONNESO
Clerk of the Circuit Court**

By: _____

Deputy Clerk

ORDINANCE EXHIBIT "A"
AMENDED AND RESTATED CHAPTER 29,
ARTICLE VII.- IMPACT FEES,
DIVISION 2.- EDUCATIONAL FACILITIES

ARTICLE VII. - IMPACT FEES

DIVISION 1. - GENERALLY

Secs. 2-29-71—2-29-80. - Reserved.

DIVISION 2. - EDUCATIONAL FACILITIES

Sec. 2-29-81. - Title, authority and applicability.

- (a) This division shall be known and may be cited as the "Manatee County School Impact Fee Ordinance".
- (b) The Board of County Commissioners of Manatee County has the authority to adopt this division pursuant to Article VIII, Section 1(f), Florida Constitution (1968 revision); Chapters 125, 163, and 235 (Florida Statutes 2001).
- (c) This division shall apply uniformly throughout Manatee County, in the unincorporated areas and in all incorporated areas thereof.

Sec. 2-29-82. - Legislative findings, and reliance upon the impact fee study.

The "whereas clauses" and findings set forth in Ordinance No. 16-03 are hereby adopted as legislative findings. Further, the Board of County Commissioners of Manatee County hereby relies upon the "Manatee County School Impact Fee Study" dated November 3, 2015 in the adoption of Ordinance No. 16-03.

Sec. 2-29-83. - Definitions.

For the purposes of this division solely, the definitions of the following words and phrases shall apply, unless the context clearly requires otherwise:

Ancillary facilities means buildings, capital equipment, sites, and site improvements necessary to provide support services to educational programs (e.g., facilities as vehicle maintenance, warehouses, maintenance or administrative buildings) not located at school plants.

Applicant means that person or entity applying for residential development permit approval.

Auxiliary facilities means those portions of a school plant which are not designated for student usage.

Building permit means the official document or certification issued by a municipality or by the county authorizing the commencement of construction of a building or structure.

Capital costs means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or educational facility expansions. Capital costs also includes the payment of principal, interest, and finance costs, and provide necessary revenues related to bonds, certificates of participation in lease-purchase programs, or other indebtedness issued by or on account of the school board to fund improvements to the district's educational facilities otherwise eligible for funding under section 2-29-89 hereof.

Capital equipment means equipment, with an expected use life of five (5) years or more.

Capital improvements means educational facilities and capital equipment which increase the capacity of the school system.

Certificate of occupancy means the document issued by the building official of a municipality or by the county, allowing the occupancy or use of a building and certifying that the structure or use has been constructed in compliance with all applicable codes and ordinances.

Collecting government means the county unless a municipality has entered into an interlocal agreement with the school board and the county to collect education impact fees itself, in which case the collecting government shall be that municipality.

County means the County of Manatee, a political subdivision of the State of Florida.

County Commission means the Manatee County Board of County Commissioners.

District means the Manatee School District.

Duplex means any residential building which is surrounded by open space or yards on a single lot and contains two (2) dwelling units.

Dwelling unit means a building structure, or a portion thereof, which is designed or used for residential occupancy, which consists of one or more rooms, and which is arranged, designed or used as living quarters.

Educational facilities means the land, site improvement, building, furniture and capital equipment that are constructed, installed, purchased or established for School Board owned school plants and ancillary facilities.

Educational facilities impact fee report means the report, entitled "Manatee County School Impact Fee Study" dated November 3, 2015, prepared by TischlerBise.

Feepayer means a person commencing a land development activity in Manatee County, under the land development jurisdiction of the county or a municipality in Manatee County.

Impact fee means the fee imposed under section 2-29-85 of this division.

Impact fee receipt means the document acknowledging payment of the proper impact fee issued to a feepayer prior to the issuance of a certificate of occupancy.

Land development activity means any change in land use or any construction or installation of a dwelling unit, or any change in the use of any structure that may result in additional students in the public schools of the district.

Mobile home means a "manufactured home" or "park model" vehicle, which are placed on a lot and intended to be used for continuous residential occupancy.

Multifamily dwelling unit means a dwelling unit which is attached to two or more dwelling units located on a single lot or parcel in the same structure, including apartments and attached condominiums. The category of "All Other Residential," as set forth in section 2-29-85, includes multifamily units.

Municipalities means the municipalities of Bradenton, Palmetto, Anna Maria, Holmes Beach, Bradenton Beach, the town of Longboat Key, and any municipality that is hereafter incorporated within Manatee County, Florida.

New dwelling unit means a dwelling unit for which a residential development permit application has been received by Manatee County or a municipality after the effective date of this division.

Public schools means all educational facilities for prekindergarten and kindergarten classes; elementary and secondary school classes and special classes, including adult, part-time, vocational and evening schools, courses, or classes, operated under the control of the school board.

Residential development permit means a building permit for the construction or addition of a residential dwelling unit. For the purposes of this division, the construction or addition of a residential unit shall include the installation of a mobile home.

School board means the School Board of Manatee County.

School plant means the land, building, furnishings, equipment and site improvements which are necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services for each student and includes auxiliary facilities.

Single-family means one dwelling unit, whether attached or detached, located on one lot, but does not include townhouses. This definition includes single-family detached and attached dwelling units.

Superintendent means the superintendent appointed by the School Board of Manatee County.

Structure means any combination of materials used to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

Townhouses means three or more dwelling units, located on separate adjoining lots, which are joined to each other in a group by a common party wall, floor, ceiling and/or connecting permanent structure.

Sec. 2-29-84. - Rules of construction.

- (a) This division shall be liberally construed to effectively carry out its purpose in the interest of promoting and protecting the public health, safety and welfare.
- (b) For the purposes of administration and enforcement of this division, the following rules of construction shall apply to the text of this division, unless otherwise stated in this division:
 - (1) In case of any difference of meaning or implication between the text of this division and any caption, illustration, summary table, or illustrative table, the text shall control.
 - (2) The word "shall" is always mandatory and not discretionary; the word "may" is discretionary.
 - (3) Words used in the present tense shall include the future; and words used in the singular shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."
 - (5) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected words shall apply in combination.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
 - (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

- (c) Nothing in this division shall be construed or interpreted to include the county or any municipality in the definition of "agency" in Section 120.52, Florida Statutes, or to otherwise subject the county or any municipality to the application of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes.

Sec. 2-29-85. - Determination of the amount of impact fee.

- (a) The educational facilities impact fee shall be the amount calculated as set forth below, based upon the date of impact fee determination:

Maximum Supportable School Impact Fees	
Single-Family Detached	\$6,475
Townhouse / Duplex	\$6,848
Manufactured Home	\$1,478
Multi-Family / Other	\$3,525

- (1) During the time period commencing on April 18, 2016 and ending on April 17, 2017, the impact fee shall be fifty percent (50%) of the amount set forth in the above schedule.
 - (2) During the time period commencing on April 18, 2017 and ending on April 17, 2018, the impact fee shall be seventy five percent (75%) of the amount set forth in the above schedule.
 - (3) During the time period commencing on April 18, 2018 and until such time as a new Impact Fee Study is completed, the impact fee shall be one hundred percent (100%) of the amount set forth in the above schedule.
 - (4) Notwithstanding the foregoing, if at any time after April 18, 2016, the electors of Manatee County shall approve a half-cent sales surtax to fund school construction, the impact fee shall, on and after the effective date of such sales surtax, be set at fifty percent (50%) of the amount set forth in the above schedule (regardless of any increase implemented pursuant to subparagraph (2) or (3) above) and shall remain at fifty percent (50%) thereafter.
- (b) For the purposes of this division, the entire county shall be considered one educational impact fee district.
- (c) In lieu of utilizing the schedule set forth in subsection (a) above, an independent fee calculation study may be performed as follows:

- (1) If an applicant opts not to have the educational facilities impact fee determined according to the impact fee schedule set forth in subsection (a) above, then the applicant shall prepare and submit an independent fee calculation to the superintendent. The election to submit an independent fee calculation shall be made prior to the obtaining of any building permits, and the applicant shall notify the collecting government of such election. A building permit may be issued during the period the independent fee calculation is under review.
- (2) The applicant shall reimburse the collecting government and the school board for such reasonable costs and fees, including the retention of an impact fee consultant, staff time and any attorneys fees, in reviewing any independent fee calculation study submitted.
- (3) The independent fee calculation study shall follow the prescribed methodologies and formats used in the educational facilities impact fee study, as may be modified or supplemented pursuant to section 2-29-92, or which may be deemed appropriate by the school board if acceptable under the laws of the State of Florida. The student generation and/or education impact documentation submitted shall show the basis upon which the independent fee calculation was made.
- (4) The superintendent shall provide a written determination to the applicant within sixty (60) calendar days of a completed submittal as to whether such calculation complies with the requirements of this section. A certificate of occupancy shall not be issued in the interim.
- (5) The superintendent shall consider the documentation submitted by the applicant but is not required to accept such documentation if it is determined to be incomplete, inaccurate or unreliable. The superintendent may in the alternative, require the applicant to submit additional or different documentation for consideration.
- (6) If the independent fee calculation study is determined to be acceptable by the superintendent, then the superintendent shall so notify the applicant and chief administrative officer of the collecting government and the applicant shall pay the independent fee calculation school impact fee in lieu of an amount based upon the educational facilities impact fee schedule in subsection (a).
- (7) If the independent fee calculation study is determined to be unacceptable, then the independent fee calculation shall be rejected and the superintendent shall notify the applicant and the chief administrative officer of the collecting government. Such rejection shall be in writing and set forth the reasons therefore and shall be provided to the applicant by U.S. mail. The applicant shall pay a school impact fee based upon the educational facilities impact fee schedule in effect at the time of rejection.
- (8) The applicant shall have 30 calendar days from the receipt of written notification of rejection to request a hearing pursuant to section 2-29-91 of this division. A certificate of occupancy shall not be issued in the interim.

Sec. 2-29-86. - Imposition of educational facilities impact fee.

- (a) After the effective date of the ordinance, the applicant shall pay an educational facilities impact fee, per dwelling unit, in the amount and on the terms as set forth in this division. The liability for the impact fee shall accrue upon issuance of a residential development permit for land development activity. The fee shall be payable not later than the issuance of a certificate of occupancy related to the residential development permitting or occupancy of a structure, whichever occurs first.
- (b) No certificate of occupancy for any land development activity requiring payment of an educational facilities impact fee shall be issued until the impact fee has been finally determined and paid.

Sec. 2-29-87. - Method of payment of impact fees.

- (a) The collecting government shall issue an impact fee statement to the applicant at the time of issuance of a residential development permit. Such impact fee statement shall set forth the amount of impact fee due. Failure of the collecting government to issue an impact fee statement shall in no event relieve any applicant of the obligation to pay the educational facilities impact fee. In the event the impact fee is not paid prior to the issuance of a certificate of occupancy or the occupancy of the structure, the school board or collecting government may take all legal or equitable means to collect the impact fee due. If no residential development permit is required prior to occupancy of a land development activity, the fee imposed by this division shall be payable prior to occupancy of the structure.
- (b) Payment of educational facilities impact fees shall be made to the collecting government. If the collecting government is not the government issuing the residential development permit, the collecting government shall issue a certificate of payment to the applicant for presentation to that government.
- (c) The payment of the educational facilities impact fee shall be in addition to any other impact fees, charges, or assessments due for the issuance of a residential development permit. As a collection allowance for the cost of administering and handling of such impact fees, the collecting government shall be permitted to impose on and retain from each feepayer an administrative fee of three and one-half (3½) per cent of the total educational facilities impact fee assessed over and above the amount of the impact fee collected.
- (d) A municipality, through an interlocal agreement with the school board and Manatee County, may arrange to collect the fees and pay them directly to the school board.
- (e) Educational facilities impact fees collected by a collecting government together with interest actually earned there from, if any, shall be segregated and held separately from all other revenues in a separate account and shall be transferred to the school board, after the school board establishes its trust account provided for in section 2-29-88 below, on a monthly basis

by the fifteenth day of each month for those impact fees collected in the previous calendar month, or on such other schedule as provided by an interlocal agreement.

- (f) All impact fees collected shall be properly identified and promptly deposited and held in the Manatee Educational Facilities Impact Fee Trust Account upon receipt by the school board. Such funds shall be used solely for the purposes specified in section 2-29-88 below.
- (g) The failure of the county or a municipality to collect the required impact fee shall in no event relieve any applicant from the obligation to pay the fee imposed by this division.
- (h) The payment of the educational facilities impact fee shall not entitle the applicant to a residential development permit, building permit, or a certificate of occupancy, as such other requirement standards and approvals are independent of the requirements for payments of the educational facilities impact fee.

Sec. 2-29-88. - Impact fee trust account; use of entrusted funds.

- (a) Upon adoption of the division, the school board shall establish a separate account to be known as the Manatee Educational Facilities Impact Fee Trust Account (hereinafter referred to as "trust account").
- (b) All funds withdrawn from this account must be used and expended in strict accordance with this section.
- (c) The funds transferred to the school board under section 2-29-87 shall be deposited by the school board in a separate trust account established by the school board, i.e., the trust account. The funds deposited in the trust account shall be held and maintained separate from all other accounts of the school board. The funds in the account must be used solely for the purpose of paying the capital costs of educational facilities needed to increase the capacity of the school system in order to accommodate the increased demand on that district which is reasonably attributable to the construction of each new dwelling unit in Manatee County.
- (d) Funds deposited in the trust account may be used for payment of principal and interest, and provide necessary reserves related to any bonds, certificates of participation in lease-purchase programs, or other indebtedness issued by or on account of the school board to fund improvements and additions to the district school system otherwise eligible for funding directly under subsection (c) above.
- (e) Funds on deposit in the trust account shall not be used by the school board for operational expenses, routine maintenance or repairs.
- (f) Funds on deposit in the trust account which are not immediately necessary for expenditures shall be invested by the school board. All income derived from the investment of such funds shall be deposited in the trust account and held and expended subject to the restrictions imposed in subsection (c) above.

- (g) Concurrent with the receipt of an annual audit, the school board shall provide to the county and to the municipalities, a report containing a summary of the impact fees collected during the previous year and a detailed description of the uses and expenditures for which the net impact fee revenue was expended during the preceding year. The county and municipalities shall provide to the school board a report containing a summary of all residential development permits issued in relation to land development activities occurring within the jurisdiction for which it is the collecting government, and all credits issued.
- (h) Funds from the trust account may be used to provide refunds as described in section 2-29-89.

Sec. 2-29-89. - Refund of impact fee paid.

- (a) If a building permit expires without commencement of construction, then the feepayer or his or her successor or assign may apply to the school district for a refund, without interest, of any educational facilities impact fee paid in connection with its issuance. If the applicant demonstrates that all rights to commence the construction have expired or otherwise been terminated, the school board shall refund the impact fee (or unencumbered portion thereof), after first deducting an administrative fee of one per cent.
- (b) Any funds held in the trust account which are not expended or encumbered by the end of the fiscal quarter immediately following the sixth year following the date the educational facilities impact fee was collected shall be returned by the school board to such fee payer with interest at the rate of six (6) per cent per annum from the date on which the impact fee was actually collected. A written application for refund shall be submitted to the superintendent within one hundred eighty (180) days after the expiration of the six-year period, who shall provide a recommendation to the school board on the appropriateness of the refund. In determining whether the fee paid by the feepayer has been expended or encumbered, funds in the trust account shall be considered to be expended and encumbered on a first in, first out accounting basis.

Sec. 2-29-90. - Exemptions and allowable credits.

- (a) The following land development activities are exempt from payment of the educational facilities impact fee:
 - (1) Alterations or expansion of an existing building where no additional residential units are created, where the use of such building is not changed, and where no additional public school enrollment will be generated over and above the number produced by the existing use.
 - (2) The construction of accessory buildings or structures which will not produce additional public school enrollment over and above that generated by the principal building or use of the land.

- (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same number of dwelling units and use on the same parcel of land, provided that no additional public school enrollment will be generated over and above that produced by the original use of the land, and that such destruction occurred after July 1, 2002.
- (4) The installation of a replacement mobile home on a lot or other such site when the impact fee pertaining to the site has previously been paid pursuant to this division or where a residential mobile home legally existed on such site on or before the effective date of this division.
- (5) Dwelling units in subdivisions, mobile home or manufactured housing parks and multifamily dwellings that are housing 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, the Housing of Older Persons Act of 1995, 42 U.S.C. § 3601-19 and Section 760.29, Florida Statutes (2001). To qualify for such exemption, the applicant shall provide the following to the superintendent and the collecting government:
 - a. A recorded declaration of covenants and restrictions not subject to revocation or amendment for a period of at least thirty (30) years from the date of recording which provides [for the following subparagraphs] 1. and either 2. or 3.:
 - 1. A prohibition for any resident under the age of eighteen (18) years from residing with any dwelling unit as a permanent resident; and
 - 2. At least eighty (80) per cent of the occupied units shall be occupied by at least one person fifty-five (55) years of age or older and the housing facility complies with 24 C.F.R. 100.305, 100.306 and 100.307, as may be amended; or
 - 3. All occupied units are solely occupied by persons sixty-two (62) years of age or older.
 - b. A copy of a certified letter filed with the Florida Commission on Human Relations registering such dwelling units with the State of Florida pursuant to Section 760.29, Florida Statutes.

In the event that such dwelling units, subdivisions, mobile home or manufactured housing parks or multifamily dwellings cease operating as a housing for older persons as set forth above, then educational facilities impact fees shall be assessed and payable.

- (b) Nothing herein precludes the county, school board or a municipality from entering into agreements with affordable housing providers to subsidize the educational facilities impact fees so long as the trust account is fully funded for these units.

- (c) Any claim of exemption must be made prior to or simultaneously with an application for a residential development permit.
- (d) Credits against the impact fee:
 - (1) The value of all land dedications for educational purposes and all educational facilities improvements made, which are needed or required by the district and approved and accepted by the school board, shall be creditable against the educational facilities impact fee due for the land development activity. The credits shall be determined in the manner prescribed below.
 - (2) Any person may seek to obtain a credit against the educational facilities impact fee for dedications and improvements made pursuant to this subsection. The offer to make such a dedication must specifically request educational facilities impact fee credits. Construction of all improvements must be in accordance with design standards and specifications prescribed by the applicable state law, administrative rule, or by policy of the school board. If the school board accepts the offer to dedicate the value of the credits shall be determined as set forth below.
 - (3) The following rules shall apply to the determination of the value of credits which are available to the feepayer:
 - a. Credit for the dedication of land or interest therein shall be valued at:
 - 1. By fair market value established by at least two (2) certified state appraisers obtained at the cost of the applicant, acceptable to the school board.
 - 2. By such other appropriate method as the superintendent or school board may have approved for particular land dedications or facility improvements made prior to the effective date of this division.
 - b. Credit for the dedication of land shall be provided when the land or interest therein has been conveyed to, and accepted by, the school board under the then current policy for the acceptance of dedicated or conveyed lands for this purpose.
 - c. Credit for construction of educational facilities shall be provided only after the feepayer has submitted acceptable engineering drawings and specifications and construction cost estimates to the school board. The school board shall determine the amount of any credit for educational facility improvements, based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the school board determines that such estimates submitted by the feepayer are either unreliable or inaccurate. The school board shall provide the feepayer and the chief administrative officer of the collecting government with a letter certifying the amount of the credit to be granted, the reason for the credit, and the legal description or other adequate description of the development to which the credit may be applied. The feepayer must sign and date a duplicate copy of such

letter indicating his or her agreement to the terms of the letter. No credit shall be awarded unless the letter signed by the feepayer is returned to the school board and the chief administrative officer of the collecting government.

- d. Credits against impact fees otherwise due shall not be provided until:
 - 1. The construction is completed and accepted by the school board or by the appropriate state agency, whichever is applicable;
 - 2. A suitable maintenance and defect warranty bond is received and approved by the school board, when applicable; and
 - 3. All design, construction, inspection, testing and acceptance procedures are in strict compliance with the then current requirements of the school board and the Florida Department of Education, when applicable. Credit may be provided before completion of a specified educational facility, if adequate assurances are given by the feepayer that the standards set out in subparagraph c. will be met and if the feepayer posts adequate security, as provided below, for the costs of such construction. Security in the form of a payment and performance bond, an irrevocable letter of credit, an escrow agreement, or any other functionally equivalent security shall be posted with and approved by the school board. The amount of the adequate security shall be determined by the school board. If the building or improvement will not be constructed within one year of the acceptance of the offer by the school board, the amount of the adequate security may be increased in an amount as determined by the school board consistent with school board policy.
- (4) Credits may be transferred among development units under the same ownership at the time the credit was approved or to an affordable housing trust fund.
- (5) No credit shall be granted for any dedications or improvements made prior to July 1, 2002, unless a development order requiring such dedication or improvement specifically provides for the granting of educational facility impact fee credits.

Sec. 2-29-91. - Appeals.

- (a) This section is intended to provide for appeals from the decisions from any written order, requirement, decision, determination or interpretation made by an administrative official in the enforcement of this division. Such appeal hearing shall include but not be limited to the review of the:
 - (1) Application of the educational facility impact fee pursuant to subsection 2-29-85(a);
 - (2) Denial of an independent fee calculation pursuant to subsection 2-29-85(b);
 - (3) Denial of a credit or refund pursuant to sections 2-29-89 and 2-29-90.

- (b) The applicant shall request such appeal hearing within thirty (30) days of the following, whichever is applicable:
 - (1) Determination of the impact fee;
 - (2) Denial of an independent fee calculation, credit or refund; or
 - (3) Notification of a change in circumstances that requires payment of the educational facilities impact.
 - (4) The specific act or omission that is the subject of the appeal.
- (c) Failure to request an appeal hearing within the time provided shall be deemed a waiver of such appeal.
- (d) The request for an appeal hearing shall be filed with the superintendent. The application for an appeal shall contain the following:
 - (1) The name and address of the applicant;
 - (2) The legal description of the property affected;
 - (3) If paid, the date the educational facilities impact fee was paid with a copy of the original receipt or canceled check;
 - (4) A statement of the reasons why the hearing is requested and supported by documentation and exhibits; and
 - (5) A filing fee as established by the superintendent and amended from time to time.
- (e) Upon receipt of such request, the superintendent shall review the request and, if the superintendent does not concur with the applicant, schedule an appeal hearing before the school board or a hearing officer, if so delegated by the school board, at a regularly scheduled meeting or a special meeting called for the purpose of conducting such hearing and shall provide the applicant written notice of the time and place of the hearing. The superintendent shall also notify the chief administrative officer of the collecting government of any such appeal hearing, and such chief administrative officer, or his designee, shall have the right to appear in any such hearing. The appeal hearing shall be held within forty-five (45) days of the date that the request for such hearing was properly filed.
- (f) Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the appeal hearing shall be conducted in a fair and impartial manner with each interested party having an opportunity to be heard and to present information and evidence. The school board or the hearing officer, if applicable, shall make the final determination and may make known its determination at the end of the hearing. A

final written determination shall be in writing and issued within thirty (30) days of the hearing.

Sec. 2-29-92. - Ordinance review requirements.

This division shall be reviewed by the county at least once every three (3) years. The county shall be aided by the school board. The school board shall make recommendations regarding the following items:

- (1) Amendments to this division;
- (2) Amendments to the methodology to calculation of school impact fees;
- (3) Amendments to the level of service;
- (4) Amendments in the amounts of impact fees; and
- (5) Such other data, analysis or recommendations as may be requested by the county commission.

The school board shall issue a written report to the board of county commissioners and the municipalities with recommendations for changes, if any, to this division within one hundred twenty (120) days of written notice to the superintendent that the county is reviewing this division.

The county shall receive and consider the comments and recommendations of the municipalities and other interested persons. The failure of the county commission to review in a timely manner shall not affect the validity of this division.

Sec. 2-29-93. - Enforcement.

Knowingly furnishing false information to any governmental official on any matter related to the administration of this division shall constitute a violation of this division. Violations of this division shall be prosecuted in the same manner as misdemeanors are prosecuted and upon conviction, shall be punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment; however, in addition to or in lieu of any criminal prosecution, the county, the school board or any educational facilities impact fee feepayer shall have the power to sue for legal and equitable relief in circuit court to enforce the provisions of this division.

Secs. 2-29-94—2-29-99. - Reserved.



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 8, 2016

Honorable Angelina Coloneso
Clerk of the Circuit Court
Manatee County
Post Office Box 25400
Bradenton, Florida 34206

Attention: Quantana Acevedo, Deputy Clerk

Dear Ms. Coloneso:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Manatee County Ordinance No. 16-03, which was filed in this office on January 8, 2016.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

From: ords@municode.com
To: robert.eschenfelder@mymanatee.org; [Quantana Acevedo](#)
Subject: Manatee County, FL Code of Ordinances - 1981(10428) Supplement 98
Date: Tuesday, January 12, 2016 1:06:53 PM
Attachments: [ATT00001.bin](#)
[ATT00002.bin](#)

****THIS IS AN AUTOMATICALLY GENERATED EMAIL****

Below, you will find the material that we have received/recorded to your account. This material is being considered for inclusion in your next/current update, Supplement 98

Document	Adopted Date	Recorded	Recorded Format
Ordinance No. 16-03	1/7/2016	1/12/2016	Word



Update the internet version of your Code more often than a printed supplement. We can update the Internet quarterly, monthly, even weekly.



We can post newly enacted ordinances in the online Code after each meeting.

Florida has a very broad Public Records Law. This agency is a public entity and is subject to Chapter 119 of the Florida Statutes, concerning public records. E-mail communications are covered under such laws & therefore e-mail sent or received on this entity's computer system, including your e-mail address, may be disclosed to the public or media upon request.