

**ORDINANCE NO 2015-26**

**An ordinance of the Board of County Commissioners of Osceola County, Florida; Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article III, Chapter 24, Osceola County Code, entitled Educational System Impact Fees; Providing for general provisions, payment of impact fees prior to issuance of the certificate of occupancy; Refund of impacts paid; Exemptions; Changes in size and use; Review hearings; Penalties and liens against property; Administrative fees; Findings; Definitions; Acceptance of impact fee study dated September 3, 2014; Imposition of Educational System Impact Fee; Use of monies; Alternative educational system impact fee calculation; Educational system impact fee exemptions; Educational system developer contribution credits; Review requirements; Enforcement by the School Board; Periodic impact fee rate adjustment; Notice of educational system impact fee rates; Declaration of exclusion from administrative procedures act; Providing for conflict; Providing for severability and an effective date.**

**WHEREAS**, Section 125.01, Florida Statutes, grants the Osceola County Board of County Commissioners, hereinafter the "Board", all powers necessary to carry on county government; and

**WHEREAS**, Section 163.3202(3), Florida Statutes, encourages the use of innovative land development regulations which include the use of impact fees to implement the goals, objectives and policies of a county's comprehensive plan; and

**WHEREAS**, the Osceola Board of County Commissioners adopted Ordinance No. 92-27, which established the Educational System Impact Fee for the School Board of Osceola County; and

**WHEREAS**, Ordinance No. 92-27 was amended by Ordinance No. 99-13, Ordinance No. 02-07, Ordinance No. 03-06, Ordinance No. 03-42, Ordinance No. 05-14, and Ordinance 10-11; and

**WHEREAS**, Section 163.31801, Florida Statutes, imposes specific requirements on an impact fee adopted by ordinance of a county, including use of the most recent and localized data, use of a separate accounting fund for revenues and expenditures of such impact fee, a limit on administrative charges for the collection of impact fees to actual costs, and a requirement that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee; and

**WHEREAS**, in order to amend the Educational System Impact Fee Program, it is necessary to repeal the provisions of Ordinance No. 92-27, as amended and as codified in Chapter 17, Osceola County Code, Article II, Division 3, Educational System; and

**WHEREAS**, the Board has determined that this Ordinance is in the best interest of the citizens of Osceola County, Florida.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Osceola County, Florida, that:

**Section 1. Recitals.** That the foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Amended.** Chapter 24, Osceola County Code, entitled Impact Fees, is hereby amended to read as follows:

**CHAPTER 24 IMPACT FEES**

Art. I.	In General.	§§ 24-1 --- 24-10
Art. II.	Reserved.	§§ 24-11 ---24-35
Art. III.	Educational System Impact Fees.	§§ 24-36 ---24-47
Art. IV.	Reserved.	§§ 24-48 ---24-70
Art. IV.	Reserved.	§§ 24-71 ---24-90

**ARTICLE I. GENERAL PROVISIONS**

**Sec. 24-1. Authority.**

The Board of County Commissioners is authorized to enact this Ordinance pursuant to Article VIII, Sec. 1(f), Florida Constitution, Chapter 125, Florida Statutes, Chapter 163, Florida Statutes, the Osceola County Home Rule Charter and other applicable provisions of law.

**Sec. 24-2. Definitions.**

The following words, terms and phrases, when used in Chapter 24, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) **“Accessory Building or Structure”** shall mean a detached, subordinate structure, the use of which is clearly incidental and related to the use of the principal Building or use of the land and which is located on the same lot as the principal Building.

(2) **“Apartment”** means a rental Dwelling Unit located with in the same Building as other Dwelling Units.

(3) **“Applicant”** shall mean the Person who applies for the Building Permit.

(4) **“Board”** shall mean the Board of County Commissioners of Osceola County, Florida.

(5) **“Building”** shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a Building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a Building Permit.

(6) **"Building Permit"** shall mean the official document or certificate issued by a city or the County under the authority of ordinance or law, authorizing the commencement of construction of a Building, or a portion thereof, within a Residential Construction. For purposes of the Educational System Impact Fee, the term "Building Permit" shall also include a tie-down permit for a Mobile Home.

(7) **"Capital Facilities"** shall mean those facilities identified in this Ordinance for which Impact Fees are imposed.

(8) **"Capital Facilities Impact Construction"** shall mean land development which changes the use of land in a manner which increases the impact upon the Capital Facilities for which Impact Fees are imposed under this Chapter 24 of the Osceola County Code.

(9) **"Certificate of Occupancy"** shall mean the document issued by a city or the County under the building code which indicates the completion of a building erected in accordance with plans approved by the building department, and final inspection having been performed, thereby allowing the building to be occupied.

(10) **"Cities"** shall mean collectively and individually the Cities of Kissimmee and St. Cloud.

(11) **"Comprehensive Plan"** shall mean the Comprehensive Plan of the County adopted and amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as contained in Part II, Chapter 163, Florida Statutes (1987), and as amended and supplemented from time to time, or its successor in function.

(12) **"Condominium"** means a Dwelling Unit that has at least one other similar unit within the same Building structure. The term "Condominium" excludes single-family detached units or single-family units on individual lots less than 50 feet wide, such as zero-lot line homes and townhomes. Condominium Unit owners typically have undivided ownership interest in the land and those portions of the building shared in common and are governed by a condominium declaration.

(13) **"County"** shall mean Osceola County, a political subdivision of the State of Florida.

(14) **"County Manager"** shall mean the chief administrative officer of the County, appointed by the Board or the designee of such Person.

(15) **"Development Order"** shall mean a Building Permit, zoning approval, subdivision approval, rezoning, development order, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(16) **"Duplex" or "Two-Family Dwelling Unit"** shall mean two (2) attached dwelling units on a single lot.

(17) **"Dwelling Unit"** shall mean a Building, or a portion thereof, which is designed for Residential occupancy, but excluding residential facilities which provide 24 hours a day medical care.

(18) **“Encumbered”** shall mean monies committed by contract or purchase order in a manner that obligates the County, or in the case of the Educational System Impact Fee, the School Board to expend the encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property by a vendor, supplier, contractor or owner.

(19) **“Impact Fee”** shall mean collectively and individually, as the context may require, all impact fees imposed by the County to fund Capital Facilities pursuant to this Chapter 24 of the Osceola County Code.

(20) **“Impact Fee Coordinator”** shall mean the Person appointed by the County Manager to perform such functions as designated under this Code or the designee of such Person.

(21) **“Mobile Home”** shall mean a structure transportable in one or more sections, which structure is eight (8) feet or more in width and over thirty five (35) feet in length, and which structure is built on an integral chassis and designed to be used as a Dwelling Unit when connected to the required utilities. The term Mobile Home includes manufactured homes designed to be used as Dwelling Units, as defined in Chapter 553, Florida Statutes, or its statutory successor in function, and recreational vehicles.

(22) **“Multi-Family Dwelling Unit”** shall mean a Building or a portion of a Building, regardless of ownership, containing more than one Dwelling Unit on a single lot or tract, and shall include Apartments, Condominiums, Cooperatives, Duplexes, Triplexes and Quadraplexes.

(23) **“Owner”** shall mean the Person holding legal title to the real property.

(24) **“Person”** shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(25) **“Quadraplex”** or **“Four-Family Dwelling Unit”** shall mean four (4) attached dwelling units on a single lot.

(26) **“Residential”** means Multi-family Dwelling Units, Mobile Homes or Single-family Units.

(27) **“Residential Construction”** shall mean land development designed or intended to permit more Dwelling Units than the existing use of land contains, but excluding Time-Share Property.

(28) **“Single-Family Detached Unit”** shall mean a Dwelling Unit on an individual lot including detached houses on lots less than 50 feet wide, such as zero lot line homes.

(29) **“Time-Share Property”** shall mean the facilities and accommodations offered in a time-share plan that are classified as time-share estates and time-share licenses as those terms are defined in Chapter 721, Florida Statutes, or its statutory successor in function.

(30) **“Townhouse”** shall mean an attached Single-Family Dwelling Unit connected to other single-family dwelling units by common walls. Owners have fee simple or other title to a single

unit and the land that the unit occupies. Occasionally, it may have common areas that are shared by the residents.

(31) **“Triplex” or “Three-Family Dwelling Unit”** shall mean three (3) attached Dwelling Units in on a single lot.

#### **Sec. 24-3. Rules of Construction.**

For the purposes of the administration and enforcement, the following rules of construction shall apply:

(1) In case of any difference of meaning or implication between the text of this Code and any caption, illustration, summary table, or illustrative table, the text shall control.

(2) The word “shall” is always mandatory and not discretionary and the word “may” is permissive.

(3) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(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 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 the connected terms, conditions, provisions or events shall apply.
- 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.

(7) All time periods contained within this Code shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of the earliest effective date of service or a notice or the issuance of a decision by the School Boards, County, or City. In the event the due date falls on a Sunday or legal holiday, the due date shall be extended to the next business day.

#### **Sec. 24-4. Payment of Impact Fees.**

(1) Except as otherwise provided in paragraph (2) below, prior to the issuance of a Certificate of Occupancy for any Capital Facilities Impact Construction, an Applicant shall pay the Impact Fees set forth herein directly to the County.

(2) For the Educational System Impact Fee, prior to the issuance of a Certificate of Occupancy for a Building Permit for Residential Construction, an Applicant shall pay the Educational System Impact Fee as provided in Section 24-39, as follows:

- a. If the Residential Construction is located within the unincorporated area of the County, the Educational System Impact Fee shall be paid to and collected by the County.
- b. If the Residential Construction is located within the municipal boundaries of a City, the Educational System Impact Fee shall be paid to and collected by that City pursuant to interlocal agreement.
- c. Educational System Impact Fees collected by the County or by a City shall be held separately and distinctly from all other revenues and shall be transferred on a monthly basis to the School Board. Such transfer shall occur by the 10th day of each month for those Educational System Impact Fees collected in the previous month. The County and the City, whichever collects the fee, shall be permitted to assess, in addition to the impact fee, the actual administrative costs incurred in the collection of the Educational System Impact Fee in accordance with Section 24-10.
- d. In the event of early payment of impact fees, the final impact fee due shall be assessed at the current impact fee rate at the time of Certificate of Occupancy, with any prior payment deducted from the total amount due.
- e. In the event the Educational System Impact Fee is not paid prior to the issuance of a Building Permit for the affected Residential Construction, the Educational System Impact Fee shall be collected prior to the issuance of Certificate of Occupancy or by any other method which is authorized by law, unless otherwise exempted pursuant to this Ordinance. The County or the City collecting the Educational System Impact Fee shall forward notice of such delinquency to the School Board upon discovery of any such delinquency.
- f. In the event that the Educational System Impact Fee is paid prior to the issuance of a Certificate of Occupancy for a Building Permit for a Residential Construction and that said Building Permit expires prior to completion of the Residential Construction for which it was issued, the Applicant may, within ninety (90) days of the expiration of the Building Permit, apply for a refund of the Educational System Impact Fee. Failure to timely apply for a refund of the Educational System Impact Fee shall waive any right to a refund.

1. The application for refund shall be filed with the Superintendent and contain the following:

- (a) The name and address of the Applicant;
- (b) The location of the property which was the subject of the Building Permit;
- (c) The date the Educational System Impact Fee was paid;
- (d) A copy of the receipt of payment for the Educational System Impact Fee; and
- (e) The Building Permit Number, the date the Building Permit was issued and the date of expiration.

2. After verifying that the Building Permit has expired and that the Residential Construction has not commenced, the Superintendent shall refund the Educational System Impact Fee paid for such Residential Construction.

3. A Building Permit, which is subsequently issued for a Residential Construction on the same property and which was the subject of a refund, shall pay the Educational System Impact Fee as required by this Ordinance at the time of Certificate of Occupancy for the new or reissued Building Permit.

(3) The payment of the Impact Fee shall be in addition to all other fees, charges or assessments due for the issuance of a Certificate of Occupancy or Building Permit.

(4) The obligation for payment of the Impact Fees shall run with the land.

#### **Sec. 24-5. Refund of Impact Fees Paid.**

The Impact Fees collected shall be returned to the then current owner of the property on behalf of which such fee was paid, if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the seventh anniversary of the date upon which such fees were paid. Refunds shall be made only in accordance with the following procedure:

(1) The then current Owner shall petition the County, or the School Board if requesting a refund of the Educational System Impact Fee, for the refund at least three (3) calendar months prior to the end of the fiscal year immediately following the seventh anniversary of the date of payment of the Impact Fee.

(2) The petition for refund shall be submitted to the Impact Fee Coordinator, or the Superintendent if requesting a refund of the Educational System Impact Fee, and shall contain:

- a. A notarized sworn statement that the petitioner is the then current Owner of the property on behalf of which the Impact Fee was paid;
- b. A copy of the dated receipt issued for payment of such fee, or such other record as would indicate payment of such fee; and
- c. A certified copy of the latest recorded deed or a copy of the most recent ad valorem tax bill.

(3) Within three (3) months from the date of receipt of a petition for refund of an Impact Fee, the Impact Fee Coordinator, or the Superintendent if requesting a refund of the Educational System Impact Fee, shall advise the petitioner and the Board, or the School Board if requesting a refund of the Educational System Impact Fee, of the status of the Impact Fee refund request, and if such Impact Fee has not been expended or encumbered within the applicable time period, then it shall be returned to the petitioner, with interest paid at the average net interest rate earned in the applicable Impact Fee Trust Account during the time such refunded Impact Fee was on deposit. For the purposes of this Section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out.

(4) In the event that a legal challenge is filed in connection with the payment of the Educational System Impact Fee, the seven year period referenced in subparagraph (1) shall not begin to run until completion of the associated litigation and appeals.

**Sec. 24-6. Exemptions.**

Subject to the Changes in Size and Use, and Type provisions in Section 24-7, the following development shall be exempted from payment of impact fees.

(1) Alterations or expansion of an existing Dwelling Unit which do not increase the number of families for which such Dwelling Unit is arranged, designed or intended to accommodate for the purpose of providing living quarters. This exemption includes the replacement of a Mobile Home with a Single Family Detached House.

(2) The construction of Accessory Buildings or Structures which are not on an individual or separate utility meter and will not create additional Dwelling Units.

(3) The replacement of an existing Dwelling Unit for which the applicable Impact fee has previously been paid for the lot upon which the replacement Dwelling Unit is to be situated, provided a Certificate of Occupancy is issued for the replacement Dwelling Unit within seven years of the date the previous Dwelling Unit was previously occupied, and provided the replacement does not increase the number of families for which the previous Dwelling Unit was originally arranged, designed or intended to accommodate for the purpose of providing living quarters. In the event of a replacement of the primary Building, the existing and replacement structures must be located on the same lot.

(4) The issuance of a tie-down permit for a Mobile Home on which the applicable Impact Fee has previously been paid for the lot upon which the Mobile Home is to be situated, provided a Certificate of Occupancy is issued for the replacement Mobile Home within seven years of the date the previous Mobile Home was previously occupied.

(5) Government-owned Buildings or Government-owned Residential Construction.

**Sec. 24-7 Changes in size and use.**

Impact Fees shall be imposed and calculated for the alteration, expansion or replacement of a Building or the construction of an Accessory Building or Structure if the alteration, expansion or



replacement of the Building or the construction of an Accessory Building or Structure results in a land use determined to generate greater impact than the present use under the applicable Impact Fee rate schedules adopted herein. The Impact Fee imposed shall be calculated as follows:

- (1) If the Impact Fee is calculated on a per Dwelling Unit basis and not on the basis of Square Footage, the Impact Fee imposed shall be the amount due under the applicable Impact Fee rate schedule for the Impact Fee Land Use Category resulting from the alteration, lot split or subdivision or property, expansion or replacement, less the Impact Fee that would have been imposed under the applicable Impact Fee rate for the Impact Fee Land Use Category prior to the alteration, expansion or replacement.
- (2) If the Impact Fee is calculated on the basis of Square Footage, in the event the Square Footage of a Building is increased, the Impact Fee due for the increased Square Footage represented by the Capital Facilities Impact Construction shall be calculated by determining the Impact Fee due according to the Square Footage resulting from the alteration, expansion or replacement, less the Impact Fee that would have been imposed for the original Square Footage prior to the alteration, expansion or replacement.
- (3) If the Impact Fee is calculated on the basis of land use and not Square Footage, the Impact Fee imposed shall be the Impact Fee due under the applicable Impact Fee Land Use Category resulting from the alteration, expansion or replacement, less the Impact Fee that would be imposed under the applicable Impact Fee Land Use Category prior to the alteration, expansion or replacement.
- (4) If an Impact Fee is imposed for an Accessory Building or Structure because such Accessory Building or Structure is determined to generate a greater impact than the present use, the fee shall be that applicable to the Impact Fee Land Use Category for the primary Building.

**Sec. 24-8. Review Hearings.**

- (1) An Applicant or Owner who is required to pay an Impact Fee pursuant to this Code, shall have the right to request a review hearing before the Board (or the School Board if the matter under review concerns the Educational System Impact Fee).
- (2) Such hearing shall include but not be limited to the review of the following:
  - a. The application of the Impact Fee.
  - b. Denial of an Alternative Impact Fee.
  - c. Denial of an exemption pursuant to Sections 24-6 or 24-42.
  - d. Any dispute concerning an application for credits.
- (3) Except as otherwise provided in this Code, such hearing shall be requested by the Applicant or Owner within thirty (30) days of written notice of the event or Impact Fee payment sought to be reviewed.

(4) The request for hearing shall be filed with the Impact Fee Coordinator (or the Superintendent if this matter concerns the Educational System Impact Fee) and shall contain the following:

- a. The name and address of the Applicant and Owner;
- b. The legal description of the property in question;
- c. If issued, the Building Permit Number, the date the Building Permit and/or Certificate of Occupancy was issued;
- d. If paid, the date the Impact Fees were paid; and
- e. A statement of the reasons why the Applicant or owner is requesting the hearing.

(5) Upon receipt of such request, a hearing shall be scheduled before the Board (or before the School Board if this matter concerns the Educational System Impact Fee) at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the Applicant and Owner written notice of the time and place of the hearing. Such hearing shall be held within sixty (60) days of the date the request for hearing was filed.

(6) Such hearing shall be de novo and 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 hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence. A determination shall be in writing and issued within thirty (30) days of the hearing to the Applicant and Owner.

(7) Any Applicant or Owner who requests a hearing pursuant to this section and desires the immediate issuance of a Certificate of Occupancy (or a Building Permit if the matter under review concerns the Educational System Impact Fee), or if a Certificate of Occupancy (or a Building Permit if the matter under review concerns the Educational System Impact Fee) has been issued without the payment of the Impact Fees, shall pay prior to or at the time the request for hearing is filed the applicable Impact Fees pursuant to this Ordinance. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights.

(8) An Applicant or Owner may request a hearing under this section without paying the applicable Impact Fees but no Certificate of Occupancy (or a Building Permit if the matter under review concerns the Educational System Impact Fee) shall be issued until such Impact Fees are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

#### **Sec. 24-9. Penalties and Liens Against Property.**

(1) A violation of this article shall be prosecuted as provided in section 125.69, Florida Statutes; however, in addition to or in lieu of any criminal prosecution, Osceola County shall have the power to sue in civil court or to use the code enforcement process as provided by Chapter 162, Florida Statutes, to enforce the provisions of this Chapter.

(2) Failure to dedicate land or to pay an impact fee when determined by the County that either obligation, or a combination of said obligations is required, to satisfy the impact of development

shall result in the amount due becoming a lien against the property, as provided for herein. County shall provide a written notice of the impact fee due by personal service, certified, return receipt requested United States mail or Federal Express or other equivalent overnight letter delivery company. Upon failure to pay the impact fee within thirty (30) days of the date of the notice, a Notice of Lien shall be served by personal service, certified, return receipt requested United States mail or Federal Express or other equivalent overnight letter delivery company, advising the developer that the County shall file a Claim of Lien against the property in question. Once recorded, the Claim of Lien may be foreclosed as provided for in Chapter 170, Florida Statutes, Chapter 173, Florida Statutes, or any other applicable law. The lien for unpaid impact fees shall be coequal with a lien for state, County, special district and municipal taxes and is superior in dignity to subsequently filed liens.

**Sec. 24-10. Administrative Fees.**

(1) In accordance with Florida Statute, Section 163.31801, administrative charges for the collection of impact fees must be limited to actual costs.

(2) Actual administrative costs for the County will be determined and will be adopted by resolution and will be reviewed annually. The administrative fee will be determined by comparing actual program expenditures to actual collections for the completed fiscal year immediately preceding the calculation. Cost will be allocated to each type of impact fee based on the best estimate by the Impact Fee Coordinator of time spent on each type. This fee will be in addition to the Impact Fee.

(3) Actual administrative costs for cities shall be determined in accordance with interlocal agreements.

**Sec. 24-11 – 24-20. Reserved**

**ARTICLE II. Reserved.**

**Sec. 24-21 – 24-35. Reserved**

**ARTICLE III. EDUCATIONAL SYSTEM IMPACT FEES**

**Sec. 24-36. Findings.**

The Board of County Commissioners of Osceola County ascertains, determines and declares:

(1) That the School Board has requested the County to adopt Educational System Impact Fee requiring future Residential Construction to contribute its fair share of the cost of improvements and additions to the Educational System necessary to accommodate such growth.

(2) That the School Board has determined that ad valorem tax revenue, gross receipts tax revenue, and other revenue generated by such future Residential Construction will not be sufficient to provide the improvements and additions to the Educational System required to accommodate such growth.

(3) That Section 163.3177, Florida Statutes, requires the County to adopt a Comprehensive Plan containing a capital improvements element which considers the need and location of public facilities within its areas of jurisdiction and the projected revenue source to be utilized to fund these facilities.

(4) That future land development shall be restricted unless it is consistent with the County's Comprehensive Plan and that the necessary public facilities needed for such development exist or are assured.

(5) That pursuant to Section 1013.33, Florida Statutes, the School Board and the Board are required to coordinate the planning of Educational Facilities with the planning of Residential development and the providing of other necessary services. Section 1013.33 further requires Educational Facilities and their off-site impacts to be consistent with the Comprehensive Plan. Section 163.3161(3), Florida Statutes, directs local governments to make efficient and adequate provisions for schools.

(6) That Section 163.3202(3), Florida Statutes, encourages the use of innovative land use regulations and impact fees to manage growth and to provide the necessary public facilities. The imposition by a county of impact fees on residential development to fund the capital cost of educational facilities necessitated by such development has been approved by the Florida Supreme Court in *St. Johns Co. v. Northeast Florida Builders Association, Inc.*, 583 So.2d 635 (Fla 1990).

(7) That the implementation of an Educational System Impact Fee to require future growth to contribute its fair share of the cost of required capital improvements and additions is an integral and vital element of the regulatory plan of growth management in the County.

(8) That the projected capital improvements and additions to the Educational System and the allocation of projected costs between those necessary to serve existing development and those required to accommodate the educational needs of future Residential Construction as presented in the study entitled "School Impact Fee Update Study" dated September 3, 2014 is hereby acknowledged by the County, and such projections are hereby found to conform with the Comprehensive Plan. The School Impact Fee Update Study contains three (3) different fee schedule options, and after due and thorough consideration of existing County administrative and land use policies, Option 1, as set out in the School Impact Fee Update Study, has been selected as the most appropriate and equitable fee schedule.

(9) An Interlocal Agreement Regarding Education Impact Fees was entered into between the County, the School Board, St. Cloud and Kissimmee and is dated July 31, 1999, as amended on April 19, 2004, and on August 16, 2010. It is anticipated that an amended and restated interlocal agreement will be entered into between the County, the School Board and the Cities to permit the imposition of an Educational System Impact Fee within all areas of the County. Such interlocal agreement will also govern the collection, administration and use of the Impact Fee.

(10) That the establishment of an Educational System Impact Fee is consistent with the Comprehensive Plan and furthers common welfare and interests of the people of Osceola

County, Florida.

(11) That the implementation of an Educational System Impact Fee to require future growth to contribute its fair share of the cost of growth-necessitated capital improvements to the Educational System promotes the general welfare of the citizens of Osceola County and relieves the potential burden on the Educational System occasioned by Residential Construction. The provision of Educational Facilities which are adequate for the needs of growth is in the general welfare of all County residents and planning for the impact created by Residential Construction constitutes a public purpose.

(12) That the County acknowledges that there currently exist deficiencies in the Educational System capital improvements which will be addressed by the School Board with revenues other than Educational System Impact Fees.

(13) That the data set forth in the Educational System Impact Fee Study, which was employed in the calculation of the Educational System Impact Fee rates, is the most recent and localized data available.

(14) That the administrative fee established pursuant to Section 24-10 hereof constitutes the County's and Cities' actual costs for collection of the Educational System Impact Fee including the actual costs related to the administration and the collection process.

(15) That in Chapter 420, Florida Statutes, the Florida Legislature directly recognizes the critical shortage of affordable housing in the State of Florida for very low to moderate income families, the problems associated with rising housing costs in the State, and the lack of available housing programs to address these needs. In recognition of these problems and the State's encouragement to local governments to work in partnership with the State and private sector to solve these housing problems, the County finds a need for local programs to stimulate and provide for the development of Affordable-Workforce Housing for Income-Eligible Persons.

(16) That the Board desires to provide incentives to develop and provide Affordable-Workforce Housing stock within the County so that Income-Eligible Persons who desire to live and to work in the County may have access to housing, and thus to offset the negative consequences of the shortage of such housing.

(17) That to accomplish this objective the Board finds that it is fair and reasonable to create an Affordable-Workforce Housing exemption to reduce the burden of Educational System Impact Fees on Income-Eligible Persons and encourage the development of Affordable Housing.

**Sec. 24-37. Definitions Applicable to Educational System Impact Fee.**

The following words, terms and phrases, when used in this Chapter 24, Article III, Educational System Impact Fees, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning.

(1) "**Affordable-Workforce Housing**" shall mean a Dwelling Unit which is offered for sale or rent to Income Eligible Persons who are employed in occupations and professions in which

they are considered essential services personnel, as consistent with Section 420.9075, Florida Statutes, and any applicable local housing assistance plan, and which monthly rent or monthly mortgage payments, including taxes, insurance and utilities, do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross income for Low-Income Persons and Very-Low-Income Persons.

(2) **“Alternative Educational System Impact Fee”** shall mean any alternative fee calculated by an Applicant and approved by the Superintendent or the School Board pursuant to Section 24-41.

(3) **“Ancillary Plant”** shall mean the Buildings, sites and site improvements necessary to provide support services to educational programs and shall include, but not be limited to, such facilities as vehicle maintenance, warehouse, maintenance or administrative Buildings not located at Educational Plants.

(4) **“Annual Educational System Rate Resolution”** shall mean the resolution described in Section 24-39 and 24-47 hereof, establishing Educational System Impact Fee rates.

(5) **“Auxiliary Facilities”** shall mean those portions of an Educational Plant which are not designated for student occupant stations.

(6) **“County Educational System”** or **“Educational System”** shall mean the Educational and Ancillary Plants which are used to provide instruction within the Public Schools or the administrative or support activities related thereto.

(7) **“Educational Facilities”** shall mean the Building, vehicles, and equipment that are built, installed or established to serve educational purposes and are designated for student occupant stations or to facilitate the delivery of educational services.

(8) **“Educational Plant”** shall mean the land, Building, furniture, equipment, and site improvements necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services for each student and shall include both the Educational and Auxiliary Facilities.

(9) **“Educational System Impact Fee Trust Account”** shall mean the trust account created pursuant to Section 24-40.

(10) **“Educational System Impact Fee”** shall mean the fee imposed for Residential Construction pursuant to Section 24-39 of this Code.

(11) **“Educational System Impact Fee Study”** shall mean the study adopted pursuant to Section 24-39, as amended and supplemented pursuant to Section 24-44, for purposes of the Educational System Impact Fee.

(12) **“Housing for Older Persons”** shall mean Residential Dwelling Units that (1) are within a community or subdivision that is operated as Housing for Older Persons in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Acts 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. §§ 3601-19; or its statutory successor in function; and (2) prohibit any person under the age of 18 years of age from residing within any Dwelling Unit on the property as a permanent resident, as evidenced by a recorded declaration of covenants and restrictions that runs with the land and is not subject to revocation or amendment for a period of at least 30 years from the date of recording.

(13) **"Income Eligible Persons"** shall mean one or more natural persons, the total adjusted gross household income of which does not exceed 140% of the median adjusted gross income for households within the metropolitan statistical area covering the County as reported by the U. S. Department of Housing and Urban Development or its governmental successor in function.

(14) **"Public Schools"** shall mean all kindergarten classes; elementary, middle and high school grades and special classes; and all adult, part-time, vocational and evening school, courses or classes operated by law under the control of the School Board.

(15) **"School Board"** shall mean the governing body of the School District of Osceola County, Florida.

(16) **"Student Occupant Stations"** shall mean the area necessary for a student to engage in educational activities, excluding Ancillary Plants and Auxiliary Facilities.

(17) **"Superintendent"** shall mean the chief administrative officer of the Public Schools pursuant to Section 5, Article IX of the Florida Constitution, or the designee of such person.

**Sec. 24-38. Acceptance Of Impact Fee Study.** The Board hereby acknowledges and incorporate by reference herein that study entitled "School Impact Fee Update Study," dated September 3, 2014, including the assumptions, conclusions and findings in such study as to the determination of anticipated costs of the additions to the County Educational System required to accommodate growth.

**Sec. 24-39. Imposition of Educational System Impact Fee.**

(1) All Residential Construction occurring within the County, both within the unincorporated area and within the Cities, shall pay the Educational System Impact Fee established in accordance with this Code prior to the issuance of a Building Permit.

(2) The Educational System Impact Fee rates for Osceola County shall be those established in the School Impact Fee Update Study, dated September 3, 2014, identified as Option 1 therein. Future adjustments shall be made in accordance with Section 24-46 and 24-47.

**Sec. 24-40. Use Of Monies.**

(1) Educational System Impact Fees collected and transferred to the School Board shall be deposited in a separate trust account established by the School Board, maintained under the direction of the Superintendent, and supervised by the School Board. Such account shall be

designated as the "Educational System Impact Fee Trust Account" and shall be maintained separately and apart from all other accounts of the School Board.

(2) The School Board shall: (1) annually submit to the County a plan outlining the proposed use of the Educational System Impact Fees unless this information is otherwise provided to the County by the School Board Business Advisory Board; and (2) maintain adequate records to justify all expenditures from the Educational System Impact Fee Trust Account. Upon reasonable notice, the County shall have access to such books, records and documents relating to the Educational System Impact Fee Trust Account for the purpose of inspection or audit. The County or Cities have the right, but not the duty, to audit the School Board's Educational System Impact Fee Trust Account at sole cost and expense of the audit-initiating jurisdiction.

(3) The monies deposited into the Educational System Impact Fee Trust Account shall be used solely for the purpose of providing growth necessitated capital improvements and additions to Educational Plants and Ancillary Plants of the County Educational System including, but not limited to:

- a. Design and construction plan preparation;
- b. Acquisition of school busses;
- c. Any permitting or application fees;
- d. Fees for professional services, including but not limited to architecture, engineering, surveying, landscaping, soils and material testing, legal, appraisals, and construction management;
- e. Land acquisition, including any cost of acquisition;
- f. Construction and design of Educational Plants and Ancillary Plants or improvements and additions thereto;
- g. Construction and design of drainage facilities required by the construction of Educational Plants and Ancillary Plants or improvements or addition thereto;
- h. Relocating utilities required by the construction of Educational Plants and Ancillary Plants or improvements or additions thereto;
- i. Site development and improvements incidental to the construction of Educational Plants and Ancillary Plants or improvements and additions thereto;
- j. Landscaping incidental to the construction of Educational Plants and Ancillary Plants or improvements and additions thereto;
- k. Construction management and inspection incidental to the construction of Educational Plants and Ancillary Plants or improvements and additions thereto;



- l. Surveying, soils and material testing incidental to the construction of Educational Plants and Ancillary Plants or improvements and additions thereto;
- m. Acquisition of furniture, fixtures and equipment necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services at Educational Plants;
- n. Repayment of monies borrowed from any budgetary fund of the County or the School Board or from another School Board pursuant to the Classroom's First Program set forth in § 1013.68, Florida Statutes, which were used to fund growth necessitated capital improvements and additions to the Educational Plants or Ancillary Plants as provided herein; and
- o. Payment of debt service, to include the payment of principal and/or interest, in connection with bonds issued by the School Board of Osceola County, Florida, the proceeds of which will be used by the School Board to provide growth necessitated capital improvements and additions to the Educational Plants and Ancillary Plants of the County Educational System;
- p. Funding of growth-related construction for education facilities within Education Facilities Benefit Districts, including the payment of principal and/or interest on non-taxable bonds issued by Educational Facilities Benefit Districts.
- q. Any other use which may be permitted the School Board under applicable law.

(4) The moneys deposited into the Educational System Impact Fee Trust Account shall be used solely to provide capital improvements and additions to the County Educational System as necessitated by growth and shall not be used for any expenditure that would be classified as a maintenance or repair expense.

(5) Funds on deposit in the account which are not immediately necessary for expenditure shall be invested by the School Board. All income derived from such investments shall be deposited in the Educational System Impact Fee Trust Account and used as provided herein.

**Sec. 24-41. Alternative Educational System Impact Fee Calculation.**

(1) In the event an Applicant believes that the impact to the Educational System necessitated by Residential Construction is less than the Educational System Impact Fee provided for in Section 24-39, such Applicant may, prior to issuance of a Building Permit for such Residential Construction, submit a calculation of an Alternative Educational System Impact Fee.

(2) The Alternative Educational System Impact Fee calculations shall be calculated for that land use type analyzed on a countywide basis and based on data, information or assumptions contained in this ordinance and the Educational System Impact Fee Study, or an independent source, provided that:

- a. The independent source is a generally accepted standard source of demographic and education planning; or
- b. The independent source is a local study supported by a data base adequate for the conclusion contained in such study and performed pursuant to a generally accepted methodology of education planning.
- c. If a previous Residential Construction project has submitted a local study consistent with the criteria required herein, and if such study is determined by the County, after consultation with the Superintendent and the City or Cities wherein the Residential Construction is located to be current, the impact upon the Educational System as described in such prior local study shall be presumed to exist for other similar Residential Construction. In such circumstances, the Alternative Educational System Impact Fee shall be established to reflect the impact upon the Educational System as described in the prior local study. There shall be a rebuttable presumption that an alternative impact fee study conducted more than three (3) years earlier is invalid.

(3) For purposes of any Alternative Educational System Impact Fee calculation, the Residential Construction shall be presumed to have the maximum impact on the County Educational System.

(4) The proposed Alternative Educational System Impact Fee and support documentation shall be submitted to the Superintendent who shall review the calculation and provide a preliminary written determination to the Applicant within sixty (60) calendar days of submittal as to whether such calculation complies with the requirements of this section.

(5) If the Superintendent determines that the data, information and assumptions utilized by the Applicant to calculate the Alternative Educational System Impact Fee complied with the requirements of this section and that the calculation of the Alternative Educational System Impact Fee was by a generally accepted methodology, then the Alternative Educational System Impact Fee shall be paid in lieu of the Educational System Impact Fee provided for in Section 24-39. The Applicant shall present the written determination approving the Alternative Educational System Impact Fee at the time of payment of the Educational System Impact Fee. Copies of the written determination shall be provided to the governing entity which would issue the subject Building Permit.

(6) If the Superintendent determines that the data, information and assumptions utilized by the Applicant to calculate the Alternative Educational System Impact Fee do not comply with the requirements of this section or that the calculation of the Alternative Educational System Impact Fee is not by a generally accepted methodology, then the Alternative Educational System Impact Fee shall be rejected. Such rejection shall be in writing and set forth the reasons therefor and shall be provided to the Applicant by certified mail. The Applicant shall have thirty (30) calendar days from the receipt of written notification of rejection to request a hearing pursuant to section 24-8.

(7) Any Applicant or Owner who submits a proposed Alternative Educational System Impact Fee pursuant to this section and desires the immediate issuance of a Building Permit shall pay,

prior to the issuance of the Building Permit, the applicable Educational System Impact Fee pursuant to section 24-39. Such payment shall be paid to the County or Cities that issue the subject Building Permit and shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the School Board, shall be refunded to the Applicant or Owner. The County, Cities or School Board shall not pay interest on the funds paid under protest and subsequently refunded unless interest has been earned on such funds.

**Sec. 24-42. Educational System Impact Fees Exemptions.**

The following development shall be exempted from payment of the Educational System Impact Fee.

(1) Subject to the availability of other School Board revenues to pay for this exemption, any Residential Construction that qualifies as Affordable-Workforce Housing and meets the following requirements:

- a. Any Person seeking an Affordable-Workforce Housing exemption shall file with the Superintendent an Application for Exemption prior to the issuance of a Building Permit for the proposed Residential Construction. The Application for Exemption shall contain the following:
  - (1) The name and address of the Owner;
  - (2) The legal description of the Residential Construction;
  - (3) The number of bedrooms within the Residential Construction;
  - (4) The proposed selling price or the proposed rental price, as applicable;
  - (5) Evidence that the Residential Construction shall be occupied by Income-Eligible Persons; and
  - (6) Evidence that the residential construction shall be occupied by persons employed in occupations and professions in which they are considered essential services personnel, as consistent with Section 420.9075, Florida Statutes, and any applicable local housing assistance plan.
  - (7) Evidence that the Residential Construction is part of a mult-family project, which is funded by a government affordable housing program, if applicable.
- b. For Residential Construction to receive an Affordable-Workforce Housing exemption, it must meet all the restrictions of Affordable-Workforce Housing as provided herein and these restrictions must continue for a period of at least thirty (30) years from the date of issuance of a Certificate of Occupancy. Such restrictions must either be contained within the deed for the Residential Construction; the terms, restrictions and conditions of a direct government grant or subsidy that will fund the

Residential Construction; or within the terms of a development agreement between the County and the Owner.

- c. If the Residential Construction meets the requirements for an Affordable-Workforce Housing exemption, the Superintendent shall issue an exemption. The exemption shall be presented in lieu of payment of the Educational System Impact Fees.
- d. The amount of the Educational System Impact Fees shall not be increased to replace any revenue lost due to the Affordable-Workforce Housing Exemption.
- e. No exemption of this type shall be granted for a residential construction which consists of a mobile home.
- f. In the event the Residential Construction fails to meet the restrictions of Affordable-Workforce Housing as provided herein within the 30-year period following the issuance of the Certificate of Occupancy such that the property no longer qualifies as Affordable-Workforce Housing and is no longer occupied by Income-Eligible Persons, the Educational System Impact Fees in effect at the time of the change in circumstances shall be immediately due.

(2) Any Residential Construction that qualifies as Housing for Older Persons and meets the following requirements:

- a. Any Person seeking a Housing for Older Persons exemption shall file with the Superintendent an Application for Exemption prior to receiving a Building Permit for the proposed Residential Construction. The Application for Exemption shall contain the following:
  - (1) The name and address of the Owner;
  - (2) The legal description of the Residential Construction;
  - (3) Evidence that the Residential Construction is within a community or subdivision that is operated as Housing for Older Persons in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Acts 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. §§ 3601-19, or its statutory successor in function; and
  - (4) A copy of the recorded declaration of covenants and restrictions that run with the land, cannot be revoked or amended for a period of at least 30 years from recording, and that prohibit any person under the age of 18 years of age from residing within any Dwelling Unit on the property as a permanent resident.
- b. If the Residential Construction meets the requirements for a Housing for Older Persons exemption, the Superintendent shall issue an exemption. The exemption shall be presented in lieu of payment of the Educational System Impact Fee.

- c. The amount of the Educational System Impact Fee shall not be increased to replace any revenue lost due to the Housing for Older Persons Exemption.
- d. In the event the recorded declaration of covenants and restrictions is breached or otherwise modified within the 30-year period following recording such that persons under the age of 18 are allowed to reside as permanent residents in any Residential Construction receiving a Housing for Older Persons exemption, the Educational System Impact Fee in effect at the time of the change in circumstances shall be due.

**Sec. 24-43. Educational System Developer Contribution Credits.**

(1) Subject to the terms and conditions of this Section 24-43, the School Board shall grant a credit against the Educational System Impact Fee for the donation of land and for the construction of an improvement or addition to the County Educational System that is required pursuant to a Development Order or made voluntarily. Such donations or constructions shall be subject to the approval of the School Board.

(2) Prior to issuance of a Building Permit, any Applicant who desires to receive a credit shall submit a proposal for donations or contributions to the County Educational System. The proposal shall include:

- a. a designation of the Residential Construction for which the plan is being submitted;
- b. a legal description of the land to be donated;
- c. a written appraisal of such land prepared in conformity with all County and legal requirements;
- d. a list of the contemplated contribution to the County Educational System;
- e. an estimate of the proposed construction costs certified by a professional architect or engineer; and
- f. a proposed time schedule for completion of the proposed plan.

(3) The proposal shall be filed with the Superintendent and reviewed by the School Board at a regularly scheduled meeting or a special meeting. The Applicant or Owner shall be provided with written notice of the time and place of the review. Such review shall be held within 45 days of the date the proposal was submitted.

(4) At the review, the School Board shall determine:

- a. if such proposal is in conformity with contemplated improvements and additions to the County Educational System;
- b. if the proposed donation of land and construction by the Applicant is consistent with the public interest; and

- c. if the proposed time schedule is consistent with the capital improvement program for the County Educational System

(5) The decision of the School Board as to whether to accept the proposal shall be in writing and issued within 20 working days of the review. A copy shall be provided to the Applicant by certified mail and to the governmental entity responsible for issuing the Building Permit. The Applicant shall have thirty (30) calendar days from the receipt of written notification of rejection to request a hearing pursuant to section 24-8.

(6) Upon approval of a proposal, the School Board shall determine the amount of the credit based upon the value of the contribution and shall approve a timetable for completion of the plan. After determination by the School Board of the amount of credit and the timetable for completion, the Applicant shall have the opportunity to withdraw the proposed plan. The amount of developer contribution credit shall be determined according to the following standards of valuation:

- a. The value of donated land shall be based upon a written appraisal of fair market value as determined by an M.A.I. Appraiser who was selected and paid for by the Applicant, and who used generally accepted appraisal techniques. If the appraisal does not conform to the requirements of this Code and any applicable administrative regulations, the appraisal shall be corrected and resubmitted. In the event the Superintendent accepts the methodology of the appraisal but disagrees with the appraised value, he may engage another M.A.I. Appraiser at the School Board's expense and the value shall be an amount equal to the average of the two appraisals. If either party does not accept the average of the two appraisals, a third appraisal shall be obtained, with the cost of said third appraisal being shared equally by the School Board and the Owner or Applicant. The third appraiser shall be selected by the first two appraisers and the third appraisal shall be binding on the parties.
- b. The actual cost of construction to the County Educational System shall be based upon cost estimates certified by a professional architect or engineer. However, in no event shall any credit be granted in excess of the estimated construction costs approved by the School Board unless the construction project is competitively bid, in which case, the credit shall be limited to the actual cost or 120% of the cost estimate whichever is less; and
- c. The land donations and construction contributions shall only provide improvements or additions to the County Educational System which are required to accommodate growth.

(7) All construction cost estimates shall be based upon, and all construction plans and specifications shall be in conformity with the County Educational System construction standards. All plans and specifications shall be approved by the School Board prior to commencement of construction.

(8) A credit for the donation of land shall be granted as the property is conveyed to and

accepted by the School Board. A credit for the construction of an improvement or addition to the County Educational System shall be granted at such time as:

- a. the construction is completed, approved and accepted by the School Board; or
- b. a performance bond or an irrevocable letter of credit is posted with the Superintendent, in an amount representing the difference between the Educational System Impact Fee, and the amount of the credit.

(9) Upon completion of the construction and its approval and acceptance by the School Board, any escrow of cash, performance bond or letter of credit held by the Superintendent shall be returned to the Applicant and deemed discharged, except to the extent necessary to fund the applicable Educational System Impact Fee, with the credit added to such amount retained.

(10) In the event the amount of the credit exceeds the amount of Educational System Impact Fees due by the Applicant, the School Board may agree to reimburse the excess credit to the Applicant from future Educational System Impact Fee receipts, but only upon petition by the Applicant in accordance with the procedures set forth in paragraphs (1) through (5) of this Section 24-43.

The administration and tracking of Educational Facility Impact Fee Credits will be the sole responsibility of the School Board. For each property or lot eligible for Impact Fee Credits, the School Board will provide the County or City a copy(s) of the lot-specific Impact Fee Credit Letter, identifying the subdivision, the specific lot (s), unit type (s), and total Impact Fee amount allocated to each lot. If partial credits are issued, the Impact Fee Credit Letter shall indicate the balance due for each building permit.

(11) Any Applicant or Owner who submits a proposal and desires the immediate issuance of a Building Permit shall pay the applicable Educational System Impact Fee prior to or at the time the proposal is submitted. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the School Board, shall be refunded to the Applicant or Owner.

#### **Sec. 24-44. Review Requirement.**

This Article and the Educational System Impact Fee Study shall be reviewed by the County and School Board at least every three years. The initial and each review thereafter shall consider new estimates of population and other socioeconomic data, changes in construction, land acquisition and related costs, and adjustments to the assumptions, conclusions or findings set forth in the study adopted by Section 24-39. The purpose of this review is to evaluate and revise, if necessary, the Educational System Impact Fee to ensure that the fee does not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand generated by growth. In the event the review required by this Section alters or changes the assumptions, conclusions and findings of the study adopted by reference in Section 24-39, the study shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section 24-39 shall be amended to adopt by reference such updated studies.

In addition to the foregoing, the School Board shall appoint a School Board Business Advisory Board whose purpose will be to periodically report on the capital funding budget of the School Board as it relates to the Educational System Impact Fee and expenditures of the Educational System Impact Fee. The School Board Advisory Board shall report at least every six (6) months on the expenditures of the Educational System Impact Fee. Such reports shall be provided to the Board and the School Board. The School Board Advisory Business Board shall consist of seven (7) members, with four (4) being selected by the Board and three (3) being selected by the School Board. Appointments to the School Board Business Advisory Board should be persons who possess such skills as would assist them in the evaluation of capital expenditures. Among the persons who should be considered for inclusion on the School Board Business Advisory Board are realtors, appraisers, engineers, architects, landscaping specialists, accountants, builders, developers, general contractors, surveyors, planners, lawyers, and construction trade business people. Appointments shall be made for two (2) year terms and the termination of terms shall be staggered.

**Sec. 24-45. Enforcement By The School Board.**

Notwithstanding any other provision of this Code, the School Board may enforce through any available legal means, including any appropriate action in the Circuit Court in and for Osceola County, Florida, its rights under this Code against any person or entity subject to pay any impact fee hereunder, including but not limited to an action for injunctive relief in the event a Building Permit is issued without the payment of the proper impact fee, or an action for damages for the collection of impact fees due and payable. In no event shall the County or any city be a party to such litigation brought by the School Board, and such litigation shall be limited to an action against the party from whom the impact fee is due.

**Sec. 24-46. Periodic Impact Fee Rate Adjustment.**

(1) Annually, if requested by the School Board, the Board shall adopt an Annual Educational System Rate Resolution at least 90 days prior to October 1 of each year, commencing in 2016, unless a full review of this Article and the Educational System Impact Fee Study is completed pursuant to Section 24-44 herein before October 1 of such year.

(2) The Annual Educational System Rate Resolution shall set forth adjusted Educational System Impact Fee rates for the Educational System Impact Fee Land Use Categories reflecting changes in the cost of impact fee components for the upcoming year as set forth below:

- a. Educational System Impact Fee components pertaining to construction and equipment costs shall be adjusted by the average percentage change from the previous two (2) fiscal years in the Engineering News Records' Building Cost Index.
- b. Educational System Impact Fee components relating to land acquisition costs shall be adjusted by the percentage change for the previous fiscal year in the fair market value of land for real property owned by the School Board as determined by written qualified opinions of estimated value of a representative sample of School Board



owned property. Such qualified opinions of estimated value shall be issued by an M.A.I. Appraiser using generally accepted appraisal techniques.

- c. Provided, however, that in the event the Board, after consultation and input from the Superintendent, determines that the requested rate adjustment of the Educational System Impact Fee will cause Residential Construction to pay more than its fair share of the costs of improvements and additions to the educational system that are necessary to accommodate the students generated by such growth, said rate adjustment will be decreased accordingly.

(3) The adjusted rates set forth in the Annual Educational System Rate Resolution shall take effect on October 1 of the year in which the Annual Educational System Rate Resolution is adopted subject to the notice provisions set forth in Section 24-47 herein.

**Sec. 24-47. Notice of Educational System Impact Fee Rates.**

Upon adoption of the initial resolution establishing the Educational System Impact Fee rates pursuant to section 24-39, a periodic rate adjustment resolution pursuant to 24-46, or any other amendment to the Educational System Impact Fee Rates, the Impact Fee Coordinator shall publish a notice once in a newspaper of general circulation within the County which notice shall include: A) a brief and general description of the Educational System Impact Fee, B) a description of the geographic area in which the Educational System Impact Fee will be collected, C) the Educational System Impact Fee Rate to be imposed for each category of the Educational System Impact Fee, and D) the date of implementation of the Educational System Impact Fee rates set forth in the notice, which date shall not be earlier than ninety (90) days after the date of publication of the notice.

**ARTICLE IV. Reserved**

**Sec. 24-48 – 24-55. Reserved**

**ARTICLE V. Reserved**

**Sec. 24-71 – 24-90. Reserved**

**Section 3. Declaration Of Exclusion From Administrative Procedures Act.**

Nothing contained in this Ordinance shall be construed or interpreted to include the County in the definition of agency contained in Section 120.52, Florida Statutes, or to otherwise subject the County to the application of the Administrative Procedures Act, Chapter 120, Florida Statutes. This declaration of intent and exclusion shall apply to all proceedings taken, as a result of or pursuant to this Ordinance, including specifically, but not limited to, a Developer Contribution Credit under Section 24-43 or a review hearing under Section 24-8, or any review of the imposition and amount of any impact fee imposed hereunder. It is declared that the School Board is the beneficiary of the funds generated from this Ordinance, but all issues involving the manner, means and methods of collection of the Impact Fee and the amount thereof in any particular case shall be deemed to be action by the Board and not by the School Board. The School Board, whenever it is designated to sit in a decision making capacity under this

Ordinance, including but not limited to decisions concerning the exemption from, or the amount of, an impact fee in a particular case, or the award and amount of credit in a particular case, shall be deemed to be acting in accordance with this County Ordinance, and therefore the review of any decision by the School Board in its capacity acting under this ordinance shall be excluded from the Administrative Procedures Act and the review shall be limited to Petition for Writ of Certiorari in the Osceola County Circuit Court.

**Section 4. Severability.** It is declared to be the intent of the Board of County Commissioners that if any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**Section 5. Conflict.** Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

**Section 6. Inclusion in the Code.** The provisions of this Ordinance shall be included and incorporated within the Code of Ordinances of Osceola County, Florida, and may be renumbered or relettered to accommodate such inclusion.

**Section 7. Effective Date.** This Ordinance shall be filed with the Department of State pursuant to law and become effective April 20, 2015.

**Section 8. Grace Period.** The impact fee imposed by this Ordinance shall be due and payable for all residential construction subject to this Ordinance which is constructed pursuant to any building permit issued on or after July 27, 2015.


**PASSED AND ADOPTED** by the Board of County Commissioners of Osceola County, at its duly noticed meeting this 20<sup>th</sup> day of April, 2015.

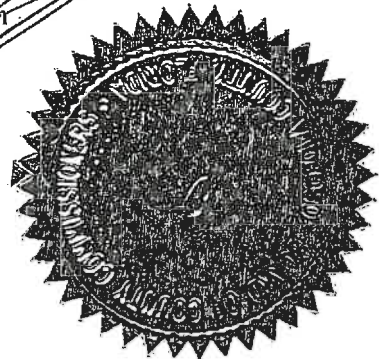
**BOARD OF COUNTY COMMISSIONERS  
OF OSCEOLA COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_

Chairman

  
Clerk of the Board  
Ord. 2015-026





**FLORIDA DEPARTMENT of STATE**

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 23, 2015

Paula J. Carpenter  
Clerk of the Board  
Osceola County  
1 Courthouse Square, Suite 4400  
Kissimmee, Florida 34741

Attention: Ms. Tammy Ross, Deputy Clerk

Dear Ms. Carpenter:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Osceola County Ordinance No. 2015-26, which was filed in this office on April 23, 2015.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb

**PROOF OF  
PUBLICATION**

*From*

**IN THE MATTER OF:  
NOTICE OF PUBLIC HEARING  
ORDINANCE 2015-26**

**FIRST PUBLICATION: April 9, 2015**

**LAST PUBLICATION: April 9, 2015**



**STATE OF FLORIDA  
COUNTY OF OSCEOLA**

Before me, the undersigned authority,  
personally appeared Claudia Neisius,  
who on oath says that she is the  
Legal Clerk of the Osceola News-Gazette,  
a twice-weekly newspaper published  
at Kissimmee, in Osceola County, Florida;  
that the attached copy of the advertisement  
was published in the regular and entire  
edition of said newspaper in  
the following issues:

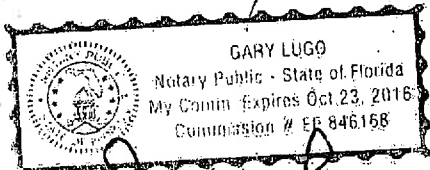
**April 9, 2015**

Affiant further says that the  
Osceola News-Gazette is a newspaper  
published in Kissimmee, in said  
Osceola County, Florida, and that the said  
newspaper has heretofore been  
continuously published in said  
Osceola County, Florida, each week  
and has been entered as periodicals  
postage matter at the post office  
in Kissimmee, in said Osceola County, Florida,  
for a period of one year preceding  
the first publication of the attached copy of  
advertisement; and affiant further says that  
she has neither paid nor promised  
any person, firm or corporation any discount,  
rebate, commission or refund for the  
purpose of securing this advertisement for  
publication in the said newspaper.

Sworn and subscribed before  
me by Claudia Neisius, who is  
personally known to me, this

9th day of April, 2015

A handwritten signature in cursive script, appearing to read "Claudia Neisius", written over a horizontal line.



Make remittance to: Osceola News-Gazette, 108 Church Street,  
Kissimmee, FL 34741  
Phone: (407) 846-7600 Fax: (321) 402-2946  
Email: [legalads@osceolanewsgazette.com](mailto:legalads@osceolanewsgazette.com)  
You can also view your Legal Advertising on  
[www.AroundOsceola.com](http://www.AroundOsceola.com) or [www.FloridaPublicNotices.com](http://www.FloridaPublicNotices.com)

## NOTICE OF PUBLIC HEARING

Notice is hereby given that Public Hearings will be held by the Osceola County Board of County Commissioners beginning at 5:30 P.M. or as soon thereafter as practical, on 04/20/2015, in the Osceola County Administration Building, Commission Chambers, 4<sup>th</sup> Floor, 1 Courthouse Square, Kissimmee, Florida, 34741 to consider the following:

**ORDINANCE 2015-26** An ordinance of the Board of County Commissioners of Osceola County, Florida; Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article III, Chapter 24, Osceola County Code, entitled Educational System Impact Fees; Providing for general provisions, payment of impact fee prior to issuance of the certificate of occupancy; Refund of impacts paid; Exemptions; Changes in size and use; Review hearings; Penalties and liens against property; Administrative fees; Findings; Definitions; Acceptance of impact fee study dated September 3, 2014; Imposition of Educational System Impact Fee; Use of monies; Alternative educational system impact fee calculation; Educational system impact fee exemptions; Educational system developer contribution credits; Review requirements; Enforcement by the School Board; Periodic impact fee rate adjustment; Notice of educational system impact fee rates; Declaration of exclusion from administrative procedure act; Providing for conflict; Providing for severability and an effective date.

Any person wishing to appeal any decision made by the Planning Commission or Board of County Commissioners with respect to any matter considered at such meeting or hearing will need a record of the proceeding, and for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Materials relating to the above may be examined in the offices of the Osceola County Community Development Department, 1 Courthouse Square, Suite 1100, Kissimmee, Florida 34741, between 8:00 a.m. and 5:00 p.m., weekdays except holidays.

Written comments may be submitted to the Community Development Department at the above address. For questions regarding these requests please contact the Osceola County Community Development Department at 407-742-0200; fax number at 407-742-0206 or e-mail at [notice@osceola.org](mailto:notice@osceola.org). Interested parties may appear at the public hearing and be heard with respect to these items <http://www.osceola.org/about-osceola-county/county-meetings/>.

Any person requiring special accommodations at the public meeting because of a disability or physical impairment should contact the Office of the Clerk of the Board, 407-742-2100, at 1 Courthouse Square, Kissimmee, Florida 34741, prior to the meeting. Complete details of all Board of County Commissioners meetings are posted at [www.osceola.org](http://www.osceola.org).

**PROOF OF  
PUBLICATION**

*From*



**STATE OF FLORIDA  
COUNTY OF OSCEOLA**

Before me, the undersigned authority,  
personally appeared Claudia Neisius,  
who on oath says that she is the  
Legal Clerk of the Osceola News-Gazette,  
a twice-weekly newspaper published  
at Kissimmee, in Osceola County, Florida;  
that the attached copy of the advertisement  
was published in the regular and entire  
edition of said newspaper in  
the following issues:

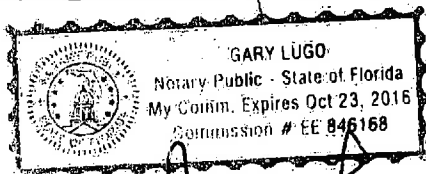
**April 9, 2015**

Affiant further says that the  
Osceola News-Gazette is a newspaper  
published in Kissimmee, in said  
Osceola County, Florida, and that the said  
newspaper has heretofore been  
continuously published in said  
Osceola County, Florida, each week  
and has been entered as periodicals  
postage matter at the post office  
in Kissimmee, in said Osceola County, Florida,  
for a period of one year preceding  
the first publication of the attached copy of  
advertisement; and affiant further says that  
she has neither paid nor promised  
any person, firm or corporation any discount,  
rebate, commission or refund for the  
purpose of securing this advertisement for  
publication in the said newspaper.

**Sworn and subscribed before  
me by Claudia Neisius, who is  
personally known to me, this**

9th day of April, 2015 -

*Claudia Neisius*



*Gary Lugo*

**IN THE MATTER OF:  
OSC. CTY.  
PLANNING DEPT.**

**FIRST PUBLICATION: April 9, 2015**

**LAST PUBLICATION: April 9, 2015**



**Make remittance to: Osceola News-Gazette, 108 Church Street,  
Kissimmee, FL 34741**

**Phone: (407) 846-7600 Fax: (321) 402-2946**

**Email: [legalads@osceolanewsgazette.com](mailto:legalads@osceolanewsgazette.com)**

**You can also view your Legal Advertising on**

**[www.AroundOsceola.com](http://www.AroundOsceola.com) or [www.FloridaPublicNotices.com](http://www.FloridaPublicNotices.com)**

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**ORDINANCE 2015-28** An ordinance of the Board of County Commissioners of Osceola County, Florida, Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article III, Chapter 24, Osceola County Code, entitled Educational System Impact Fees; Providing for general provisions, payment of impact fees; prior to issuance of the certificate of occupancy; Refund of impacts paid; Exemptions; Changes in size and use; Review hearings; Penalties and liens against property; Administrative fees; Findings; Definitions; Acceptance of impact fee study dated September 3, 2014; Imposition of Educational System Impact Fee; Use of monies; Alternative educational system impact fee calculation; Educational system impact fee exemptions; Educational system developer contribution credits; Review requirements; Enforcement by the School Board; Periodic impact fee rate adjustment; Notice of educational system impact fee rates; Declaration of exclusion from administrative procedures act; Providing for conflict; Providing for severability and an effective date.

Any person wishing to appeal any decision made by the Planning Commission or Board of County Commissioners with respect to any matter considered at such meeting or hearing will need a record of the proceeding, and for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Materials relating to the above may be examined in the offices of the Osceola County Community Development Department, 1 Courthouse Square, Suite 1100, Kissimmee, Florida 34741, between 8:00 a.m. and 5:00 p.m., weekdays, except holidays.

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