

ORDINANCE # 04-

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V "IMPACT FEES"; ESTABLISHING AN EDUCATIONAL FACILITIES IMPACT FEE FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATIONAL FACILITIES, INCLUDING MIDDLE SCHOOLS; CREATING DIVISION 7 "EDUCATIONAL FACILITIES" TO INCLUDE NEW SECTIONS 62-921 THROUGH 62-935; PROVIDING FOR A SHORT TITLE; STATUTORY AUTHORITY; APPLICABILITY; INTENT AND PURPOSE; FINDINGS; RULES OF CONSTRUCTION; DEFINITIONS; IMPOSITION, COMPUTATION AND PAYMENT OF THE EDUCATIONAL FACILITIES IMPACT FEE; ESTABLISHING IMPACT FEE DISTRICTS AND TRUST FUNDS; PROVIDING FOR USE OF FUNDS AND REFUNDS OF FEES PAID; ESTABLISHING EXEMPTIONS, CREDITS AND INCENTIVES; PROVIDING FOR REVIEW; ESTABLISHING PENALTIES AND ADDITIONAL REMEDIES; PROVIDING FOR LEGAL STATUS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA EMBRACED; PROVIDING FOR CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE..

WHEREAS, the Brevard County Comprehensive Plan establishes the objective of providing essential public services and facilities that are effective, efficient, and adequate to meet the needs of the projected population and that support and reinforce the growth management and land development guidelines; and

WHEREAS, the Brevard County Comprehensive Plan establishes the guideline that new development provide the essential services needed by the new development either through actual construction of the applicable facilities or through specific revenue producing mechanisms; and

WHEREAS, the Brevard County Comprehensive Plan states that the imposition of impact fees is one of the land use regulatory devices that assures that new development will help finance additional facilities required as a result of the new development to provide a minimum level of capital facilities; and

WHEREAS, the Florida Legislature, through the enactment of Section 163.3202(3), Florida Statutes, has sought to encourage local governments to enact impact fees as land development

regulations; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida has authorized an independent study to analyze the fiscal impacts of development activity on the public primary and secondary educational system; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida received this independent study in February of 2004; and

WHEREAS, this independent study calculated the maximum impact fees that could be imposed for educational facilities based on currently available data and analysis; and

WHEREAS, the Florida Legislature, through the enactment of Chapter 2004-354, General Laws of Florida, has enabled, Educational Facilities Impact Fees to be expended on the construction of facilities for use by charter schools that have been specifically created to mitigate the educational impact created by development of new residential units.

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

**Section 1.** Article V of Chapter 62 of the Code of Ordinances of Brevard County, Florida is hereby amended by creating a new Division 7 to read as follows:

**DIVISION 7. EDUCATIONAL FACILITIES**

**Sec. 62-921. Short title; statutory authority; applicability.**

(a) This division shall be known and may be cited as the Brevard County Educational Facilities Impact Fee Ordinance.

(b) The Board of County Commissioners has the authority to adopt this division pursuant to Fla. Const. art. VIII and F.S. chs. 125 and 163.

(c) The provisions of this division and the educational facilities impact fees established herein shall apply in both the unincorporated area of the county and to the incorporated areas of the county.

**Sec. 62-922. Intent and purpose.**

- (a) This division is intended to implement and be consistent with the Brevard County Comprehensive Plan, as amended from time to time.
- (b) The purpose of this division is to ensure that new residential development bears a proportionate share of the cost of the capital expenditures necessary to provide public elementary and secondary school facilities necessitated by that new residential growth in the county.

**Sec. 62-923. Findings.**

Based on information provided by the School Board, the Board of County Commissioners makes the following findings and determinations:

- (1) Under established levels of service for educational facilities, the existing educational infrastructure is not adequate to accommodate students anticipated to reside in the county as a result of new residential development.
- (2) Existing revenue sources available for the construction of additional educational facilities are not sufficient to fund construction of the educational facilities necessary to accommodate the students anticipated to reside in new development.
- (3) New development should contribute its fair share of the costs of providing new educational facilities necessary to accommodate the students anticipated to reside in new development.
- (4) Impact fees provide a reasonable method of regulating new development in the county to ensure that such new development pays its fair share of the capital costs of governmental services and facilities necessary to accommodate the new development.
- (5) The impact fees set forth in this division are not established at a rate to correct existing deficiencies.
- (6) The impact fees set forth in this division establish a fair and conservative method of assessing new development its fair share costs.
- (7) The impact fees will not fully pay for the costs of educational facilities necessitated by new development, and the School Board and Board of County Commissioners recognize that the shortfall will have to come from other revenue sources.
- (8) The educational facilities impact fee benefit districts established in this division ensure that capital improvements to the educational system will benefit the development located within each district.
- (9) The Board of County Commissioners finds that residential communities where restrictions limiting the age of residents to 55 years of age and older have been legally recognized as having no impact on educational facilities and that, consequently, an educational facilities impact fee exemption should be established for such facilities.

- (10) The Board of County Commissioners finds that an educational facilities impact fee exemption for low income and very low income families under specific circumstances will implement the goal of providing affordable housing for low and very-low income homebuyers, as set forth in following criteria contained in policy 1.1 of the Housing Element in the Brevard County Comprehensive Plan:
- D. Ensure that homes purchased by low and very-low income homebuyers are brought up to Section 8 Housing Quality Standards or higher.
  - E. Encourage mortgage lenders to invest mortgage dollars in housing for low and very-low income families.
  - F. Encourage mortgage lenders to investigate and utilize existing programs, such as Fannie Mae, for low income homebuyers.
- (11) The Board of County Commissioners finds that formation of municipal-operated charter schools are one method of reducing school and classroom overcrowding and offsetting the high cost of educational facilities in Brevard County.

**Sec. 62-924. Rules of construction.**

- (a) The provisions of this division shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.
- (b) For the purposes of administration and enforcement of this division, unless otherwise stated in this division, the following rules of construction shall apply to the text of 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 term "shall" is always mandatory and not discretionary; the term "may" is permissive.
  - (3) Words used in the present tense shall include the future; and words in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - (4) The term "used for" includes the term "arranged for," "designed for," "maintained for" or "occupied for."
  - (5) The term "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar legal entity.
  - (6) 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. The term "and" indicates that all the connected terms, conditions, provisions or events shall apply.

- b. The term ``or" indicates that the connected items, conditions, provisions or events may apply singularly or in any combination.
  - c. The term ``either . . . or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.
- (7) The term ``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.
- (8) The term ``county manager" means the county manager or the county officials he or she may designate to carry out the administration of this division.
- (9) The land use types listed in § 62-929 shall have the same meaning as under article VI of this chapter.

**Sec. 62-925. Definitions.**

As used in this division, the following words shall have the following meanings, unless some other meaning is plainly intended:

*Area Median Income* means the median family income in Brevard County, Florida, adjusted for family size, as published by the U.S. Department of Housing and Urban Development annually.

*Attached Residential Dwelling* includes “Single-family Attached Residential”, “Duplex” and “Dwelling, multi-family” as defined in § 62-1102 of the Brevard County Code of Ordinances, provided, however, that for the purposes of this ordinance residential social service facilities, adult congregate living facilities, retirement homes, nursing homes, and other structures operated by a social service organization to provide residential care to children, the aged, the destitute, and the physically, mentally and/or emotionally challenged, for the purposes of this ordinance, shall not be considered to be attached residential dwellings. For the purposes of this ordinance, attached residential dwelling units shall include any addition or alteration to an existing structure that creates one or more additional non-exempt dwelling units.

*Building Official* means the person designated as such by Brevard County or by any municipality within Brevard County.

*Building permit* means a permit for the construction of a residential building or for the installation of a mobile home that has been issued by the building official.

*Capital improvement* includes land acquisition, architecture and engineering services, site improvements, construction of buildings, acquisition of educational furnishings and equipment, and school buses, but excludes maintenance and operation of such improvements.

*Certificate of Completion* means a certificate issued by the building official after the final inspection has verified that the construction has been completed in accordance with the requirements of the building code but for which a certificate of occupancy is not required.

*Certificate of Occupancy* means a certificate issued by the building official after the final inspection has verified that the construction has been completed in accordance with the requirements of the building code.

*Eligible educational facilities and capital improvements* means those educational facilities or related capital improvements that are necessitated by new growth and development in the benefit district or county and that are (1) under the jurisdiction of the School Board, (2) owned or leased by the School Board, or (3) at the discretion of the School Board, a municipal-operated charter school that has been specifically created to mitigate the education impact created by the development of new residential units.

*Fee Payer* means a person commencing a residential development activity by applying for a building permit or a permit for installation of a mobile home.

*Manufactured Home* shall have the same meaning as “Manufactured Home” in Chapter 320.01(2)(b), Florida Statutes (2003) which reads:

“Manufactured Home” means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

*Mobile Home* shall have the same meaning as “Mobile Home” in § 62-1102 of the Brevard County Code of Ordinances.

*Municipality-operated Charter School* means a public school created pursuant to the requirements of Chapter 1002.33(15), Florida Statutes.

*New Single Family Detached Dwelling* includes new “Dwelling, Single-family” and “Modular Factory-built Home” as defined in § 62-1102 of the Brevard County Code of Ordinances, provided, however, that for the purposes of this ordinance residential social service facilities, adult congregate living facilities, retirement homes, nursing homes, and other structures operated by a social service organization to provide residential care to children, the aged, the destitute, and the physically, mentally and/or emotionally challenged shall, for the purposes of this ordinance, shall not be considered to be new single family residences. . For the purposes of this ordinance, new single family detached residential dwelling units shall include any addition or alteration to an existing structure that creates and one or more additional non-exempt dwelling units.

*Permanent* as used to modify the term “resident” or “basis” means a period of at least six months and one day in any year.

*School Board* means the District School Board of Brevard County, Florida or any entity created by that Board for the purposes of owning or leasing educational facilities or capital improvements.

*Tentative District Educational Facilities Plan* shall have the same meaning as “Tentative District Educational Facilities Plan” in Chapter 1013.35(1)(c), Florida Statutes (2003), as amended from time to time, which reads as follows:

“Tentative District Educational Facilities Plan” means the comprehensive planning document prepared annually by the district school board and submitted to the Office of Educational Facilities and SMART Schools Clearinghouse and the affected general-purpose local governments.

**Sec. 62-926. Imposition of Educational Facilities Impact Fee.**

(a) Any person who applies for a building permit for a new single family detached residence, attached residential dwelling, manufactured home or mobile home after the effective date of this ordinance shall be required to pay an educational facilities impact fee in the manner and amount set forth in this division.

(b) Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by the municipal building official, no building permit shall be issued for a new single family detached residence, new attached residential dwelling, manufactured home or mobile home until the educational facilities impact fee has been paid to the County as required by § 62-928.

(c) Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by the municipal building official, a municipality accepting a building permit application shall be responsible for requiring the applicant to obtain an educational facilities impact fee proof of payment receipt from the County and present it to the municipality prior to the issuance of the building permit. A municipality shall be responsible for paying the educational impact fee for any property where that municipality has failed to obtain an educational facilities impact fee proof of payment receipt prior to the issuance of a building permit and, as a result of those actions, has caused the County to be unable to collect the educational facilities impact fee that would have otherwise been payable for that property.

(d) Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by the municipal building official, every city accepting a building permit application shall be responsible for collecting and transmitting to the county all documentation necessary to establish an exemption from the required payment of an educational fee in accordance with the provisions of this ordinance.

(e) Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by the municipal building official, every municipality shall provide the County with a report on or before the fifteenth day of each month that identifies all building permits issued by the municipality for new single family detached residences, new attached residential dwellings, manufactured homes or mobile homes during the preceding month.

**Sec. 62-927. Computation.**

(a) The amount of the fee imposed by this division shall be determined by the following fee schedule unless the fee payer provides an impact fee study in accordance with subparagraph (b) below:

SCHEDULE OF EDUCATIONAL FACILITIES IMPACT FEES

<b>Land Use Type</b>	<b>Impact Fee for Each Separate Dwelling Unit</b>
Single Family Detached Dwelling	\$4,445.40
Attached Residential Dwelling	\$2,794.25
Manufactured Home or Mobile Home	\$2,667.24

If the type of residential development activity for which a building permit is applied for is not specified on the fee schedule set out in this subsection, the county manager shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

(b) If a fee payer opts not to have the impact fees determined according to subsection (a) of this section, then the fee payer shall prepare and submit to the county manager an independent fee calculation study for the residential development activity for which a building permit is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for such a study established by the county manager. The prescribed methodologies and formats established by the county manager for independent fee calculation studies shall ensure that the calculation of student generation rates and/or educational impacts is representative of a statistically significant percentage of similar residential types found in Brevard County and is consistent with the methodologies utilized in the Brevard County School Impact Fee Study. If the county manager concludes that the independent fee calculation study submitted by the fee payer represents an accurate calculation of the fiscal impacts of the new residential development activity, then the educational facilities impact fee may be adjusted accordingly for the fee payer's property.

**Sec. 62-928. Payment.**

(a) Any person receiving a building permit for which an educational facilities impact fee has been assessed shall pay the assessed fee to the Board of County Commissioners prior to the issuance of a certificate of occupancy for the permitted residential building or, in the case of a mobile home, prior to the issuance of a certificate of completion or other document evidencing completion. Neither Brevard County nor any municipality in Brevard County shall issue either a certificate of occupancy for a residential building or a certificate of completion for a mobile home installation until all assessed educational facilities impact fees have been paid. The obligation to pay the fee shall run with the land. A municipality may require payment of the educational facilities impact fee at any point prior to the issuance of a certificate of occupancy or, in the case of a mobile home, prior to the issuance of a certificate of completion.

(b) All funds collected shall be properly identified by educational facilities impact fee district; promptly transferred for deposit in the appropriate Educational Facilities Impact Fee Trust Fund, to be held in separate accounts as determined in § 62-930; and used solely for the purposes specified in this division.



**Sec. 62-929. Districts established.**

There are hereby established four educational facilities impact fee benefit districts with boundaries as shown below.

**Benefit District 1**

North	Northern Boundary of: Sections 31, 32, 33, 34, 35 & 36 of T27S, R35E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R36E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R37E; and Section 31 of T27S, R38E.
South	Indian River County Line
East	Atlantic Ocean
West	Osceola County Line

**Benefit District 2**

North	Northern Boundary of: Sections 1, 2, 3, 4, 5 & 6 of T26S, R35E; Sections 1, 2, 3, 4, 5 & 6 of T26S, R36E, Sections 5 & 6 of T26S, R37E; and Sections 14, 15 & 16 of T24S, R37E.
South	Northern Boundary of: Sections 31, 32, 33, 34, 35 & 36 of T27S, R35E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R36E; Sections 31, 32, 33, 34, 35 & 36 of T27S, R37E; and Section 31 of T27S, R38E.
East	Atlantic Ocean
West	Western Boundary of: Sections 6, 7, 18, 19 & 30 of T27S, R35E; Sections 6, 7, 18, 19, 30 & 31 of T26S, R35E; Eastern Boundary of: Sections 6, 7, 17, 19, 30 & 31 of T25S, R37E; Sections 18, 19, 30 & 31 of T24S, R37E.

**Benefit District 3**

North	Northern Boundary of: Sections 35 & 36 of T23S, R34E; Sections 31, 32, 33, 34, 35 & 36 of T23S, R35E; Section 31 of T23S, R36E; Sections 1, 2, 3, 4 & 5 of T23S, R36E; and Sections 3, 4, 5 & 6 of T23S, R37E.
South	Northern Boundary of: Sections 1, 2, 3, 4, 5 & 6 of T26S, R35E; and Sections 1, 2, 3, 4, 5 & 6 of T26S, R36E, Sections 5 & 6 of T26S, R37E.
East	Eastern Boundary of: Sections 3, 9, 16, 17, 20, 29 & 32 of T23S, R37E; Sections 6, 7, 18, 19, 30 & 31 of T24S, R37E; and Sections 6, 7, 17, 19, 30 & 31 of T25S, R37E.
West	Orange County Line, Osceola County Line & Western Boundary of: Sections 5, 8, 17, 20, 29 & 32 of T23S, R36E.

**Benefit District 4**

North	Volusia County Line
South	Northern Boundary of: Sections 35 & 36 of T23S, R34E; Sections 31, 32, 33, 34, 35 & 36 of T23S, R35E; Section 31 of T23S, R36E; Sections 1, 2, 3, 4 & 5 of T23S, R36E; Sections 3, 4, 5 & 6 of T23S, R37E; and Sections 14, 15 & 16 of T24S, R37E.
East	Atlantic Ocean
West	Orange County Line & Volusia County Line

**Sec. 62-930. Trust fund.**

(a) There is hereby established an educational facilities impact fee trust fund for each of the four educational facilities impact fee benefit districts established by § 62-929.

(b) Funds withdrawn from these accounts must be used in accordance with the provisions of § 62-931.

**Sec. 62-931. Use of funds.**

(a) Brevard County shall be entitled to retain up to but not more than two and one-half percent of the funds collected under this division as compensation for the administrative expense of collecting the fee and administering this division. All remaining educational facilities impact fees shall be disbursed to the School Board according to the terms of the interlocal agreement between the Board of County Commissioners and the School Board. At the discretion of the School Board, educational impact fees disbursed to the School Board may be allocated for use by a municipality for the construction of a municipality-operated charter school that has been specifically created to mitigate the educational impact created by the development of new residential dwelling units. The distributed funds shall only be used to fund those eligible educational facilities and capital improvements identified in the Tentative District Educational Facilities Plan as annually adopted by the School Board or a municipality-operated charter school that has been specifically created to mitigate the educational impact created by the development of new residential dwelling units. Educational impact fees shall not be used for the maintenance or operation of educational facilities; for the construction of educational facilities that are required to eliminate existing overcrowding or level of service deficiencies; or for the construction of educational facilities that are not under the jurisdiction or ownership, whether by lease or purchase, of the School Board with the exception of municipality-operated charter schools created to mitigate the educational impact caused by the development of new residential dwelling units to which educational impact fees have been allocated by the School Board specifically. Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by the municipal building official, for any property where a building permit has expired and the residential unit has not been completed, each municipality shall be responsible for notifying the county of the building permit expiration, that a refund is due and that a release of lien should be recorded.

(b) Funds shall be used exclusively for the construction of eligible educational facilities or capital improvements that are located within the educational facilities impact fee district from which the funds were collected or for the construction of the proportionate share of eligible educational facilities or capital improvements located in another district that will serve the district from which the funds were collected. Funds shall be expended in the order in which they are collected within each educational facilities impact fee benefit district.

(c) Each fiscal period, the Superintendent of the School Board shall transmit to the Board of County Commissioners, the adopted Tentative District Educational Facilities Plan in which educational facility impact fee funds, including any accrued interest, from the educational facilities impact fee trust funds, are assigned to specific eligible educational facilities capital improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal

period shall be retained in the educational facilities impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this division.

(d) In the event that a facility constructed for use as a municipality-operated charter school ceases to be used for public educational purposes and ownership of the facility has not reverted to the School Board, the municipality that operated the facility is required to refund, the full amount of any educational facilities impact fees that it has received to the County unless the School Board and the municipality have contractually agreed to an alternate school related use of the facility. Such refund shall be due within 180 days of the date that the municipality-operated charter school ceases to be used for public educational purposes.

**Sec. 62-932. Refund of fees paid.**

(a) If a building permit expires prior to the time that a new single family detached residence or attached residential dwelling is substantially complete or prior to the time that a mobile home or manufactured home is installed or complete, the fee payer, or his heirs, successors or assigns, may either request a refund of any prepaid educational facilities impact fee assessed, less an administrative fee equal to five percent of the total fee which represents the administration costs for refunding, or assign credit for prepayment of the impact fee to any subsequent purchaser or owner.

(b) Any funds not expended or encumbered by the end of the calendar quarter encompassing the six year anniversary of the date the educational facilities impact fee payment was paid to the county shall, upon application of the current homeowner which must be made within 180 days after the expiration of said six-year period, be returned to the current owner with interest at the rate actually received by Brevard County and/or the School Board during the period during which the funds were actually held.

**Sec. 62-933. Exemptions, credits and incentives.**

(a) *Exemptions.* The following shall be exempted from payment of the educational facilities impact fee:

- (1) Alteration or expansion of an existing residential building where no additional dwelling units are created.
- (2) The construction of accessory buildings or structures where no additional dwelling units are created.
- (3) The replacement of an existing residential building, including those partially or entirely damaged or destroyed, with a new unit of the same type and use provided that the existing residential building has been occupied at some time during the five-year period immediately preceding the construction of the new residential building.
- (4) Any nonresidential building or structure.
- (5) The construction of government owned residential buildings, which are utilized in their entirety for public purposes.

(6) Any new single family detached residence, attached residential dwelling, manufactured or mobile home located in a development that provides significant facilities and services designed to meet the physical or social needs of older persons and where, by recorded deed restriction, recorded declaration of covenants and restrictions, recorded plat restriction or recorded by-laws that require at least one person in each residence to be age 55 or older and that prohibit any person that has not achieved the age of 18 years to reside on a permanent basis. The fee payer must claim an exemption at the time of the application for a building permit or permit for the installation of a manufactured or mobile home. Any exemption not so claimed is considered waived by the fee payer. In the event that the recorded age 55 and older restriction is breached or otherwise modified within the thirty year period following recording such that a person less than 18 years of age is allowed to reside on a permanent basis in any dwelling unit, the educational facilities impact fee in effect for that dwelling unit at the time of the change of circumstances shall be due and payable.

(b) *Credits.* Upon the recommendation of the School Board, the Board of County Commissioners may award a credit against the educational facilities impact fees to be assessed on a particular residential development project if the School Board has accepted the offer of a developer to donate land and/or construct all or a part of an eligible educational facility shown in the Tentative District Educational Facilities Plan or appropriate to the implementation thereof. The amount of credit awarded shall not exceed the appraised value of donated land at the time of donation or the actual cost of constructing the educational facility. The Board of County Commissioners may require appraisals, engineering and construction documentation, and competitive bid documents to determine the amount of credit awarded.

(1) No credit shall be granted for any costs, contribution, payment, construction or land received by the School Board of Brevard County if said costs, contribution, payment, construction or land dedication is received or made before a credit agreement is approved by the Board of County Commissioners and fully executed by all applicable parties. Any claim for credit not so made and approved shall be deemed waived.

(2) Credit shall only be awarded for the construction of or land donations for eligible educational facilities.

(3) To the extent not waived by the provisions of § 62-933(b)(1) above, when a development of regional impact (DRI) development order includes exactions for eligible educational facilities or sites, the Board of County Commissioners shall award the developer a credit against the educational facilities impact fees assessed within the DRI in an amount equivalent to the value of the exactions at the time that they were accepted by the School Board.

(c) *Incentives.* As an incentive to promote the construction of new housing that is affordable to lower income households, the Board of County Commissioners establishes the following incentives, subject to the availability of budgeted funds, on a first-come, first-served basis.

(1) For homebuyers with a family income of at least 66% but not more than 80% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 25% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 75% of the educational facilities impact fee according to the provisions of this ordinance.

- (2) For homebuyers with a family income of at least 51% but not more than 65% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 50% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 50% of the educational facilities impact fee according to the provisions of this ordinance.
- (3) For homebuyers with a family income of not more than 50% of the Area Median Income, the Board of County Commissioners may provide a loan in the amount of 75% of the educational facilities impact fee due on the property. This loan shall carry an interest rate of 0% and shall be forgiven at a rate of 10% of the original amount for each year that the original homebuyer resides on the property. The homebuyer shall pay the remaining 25% of the educational facilities impact fee according to the provisions of this ordinance.
- (4) A property owner applying to qualify for the incentive loan provided for in this subsection shall, upon County approval of the application, execute a notice of assessment setting forth the balance of the educational facilities impact fee that remains unpaid. The notice shall be in recordable form and the County shall record the notice in the official records of the county. Upon execution, the notice of assessment shall constitute a lien for the balance of the educational facilities impact fee that is due under the terms and conditions of this subsection. If the property owner qualifying for the incentive provided for herein continuously resides on the qualified property for the full ten year term thereby causing the forgiveness of the loan in accordance with this subsection, the County shall cause a release of lien to be recorded. If the property owner qualifying for the incentive ceases to continuously reside on the qualified property at any time, the balance of the impact fee loan outstanding at that time shall be due and payable by the owner of the qualified property or, in the case of a sale, by their successor in title to the qualified property.

**Sec. 62-934. Penalty; additional remedies.**

A violation of this ordinance shall be an offense punishable by a fine of \$500, provided that each day that a person is not in compliance with the ordinance shall be deemed to constitute a separate violation of the ordinance. In addition to or in lieu of any criminal prosecution, the county or any fee payer shall have the power to sue in civil court to enforce the provisions of this division.

**Sec. 62-935. Review.**

The Board of County Commissioners shall review the fee schedule contained in § 62-927 at least once every five years.

**Secs. 62-936–62-1100. Reserved.**

**Section 2. Severability.** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the

effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

**Section 3.**      **Conflicting Provisions.** In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

**Section 4.**      **Area Encompassed.** This ordinance shall apply to both the unincorporated area of Brevard County and to the incorporated areas of Brevard County.

**Section 5.**      **Effective Date.** This ordinance shall become effective on September 24, 2004. Owners of residential property, as defined herein, who have been issued a building permit for construction of residential buildings by Brevard County or any municipality prior to the effective date of this ordinance shall be entitled to an exemption for educational facilities impact fees due for said property, provided that when work or activities are authorized, they are pursued in the timely manner required by issuing jurisdiction. This ordinance shall not apply to any property if the County determines that the owner, as of September 24, 2004, has entered into a bona fide contract in which that owner has agreed to pay the cost of constructing or financing new improvements for which an impact fee would have to be paid subsequent to the adoption of this ordinance and has provided a copy of the contract to the County Manager by the close of business on the effective date of this ordinance. To qualify as a bona fide contract under this section, the contract must be presented to the County on or before September 24, 2004 and must: (1) include the bona fide buyer's name and the legal description of the residential property to be conveyed to the buyer; (2) be executed by both buyer and seller prior to the effective date and time of this ordinance; and (3) include the sales price and method of payment. The applicant seeking exclusion from the ordinance must also provide evidence that bona fide consideration was paid to secure the agreement. Any

change made to the contract after the effective date of this ordinance that revises the legal description of the property shall require payment of the educational facilities impact fee.

DONE AND ADOPTED in regular session, this tenth day of August, 2004.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

By: \_\_\_\_\_  
Nancy N. Higgs, Chair

Approved by the Board on August 10, 2004