

ORDINANCE NO. 10- 09

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V "IMPACT FEES"; AMENDING DIVISION 7 "EDUCATIONAL FACILITIES"; AMENDING SECTION 62-931 USE OF FUNDS TO INCREASE THE PERCENTAGE OF FEES THAT MAY BE RETAINED BY THE COUNTY FOR ADMINISTRATION OF THE IMPACT FEE PROGRAM; PROVIDING FOR LEGAL STATUS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA EMBRACED; PROVIDING FOR CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. INTENT AND PURPOSE.

Section 62-931 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows with additions underlined and deletions stricken:

Sec. 62-931. Use of funds.

- (a) The county shall be entitled to retain up to but not more than ~~two and one-half~~ eight 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 unless the board of county commissioners has specifically authorized the expenditure of a portion of the remaining fees on the construction of a facility to be utilized by a charter school specifically created to mitigate for the educational impact created by the development of new residential units. Upon application by a residential developer and a charter school approved by the school board, including one operated by a municipality, that clearly demonstrates eligibility for educational facility impact fee funding pursuant to the requirements of F.S. § 1002.33(18)(f), the board of county commissioners may authorize the expenditure of educational facility impact fees paid within that residential development, on the construction of facilities that will be utilized by the charter school. The amount of any educational facilities impact fees expended on the construction of a charter school facility shall be the sole discretion of the board of county commissioners.

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 except as otherwise provided herein. 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 charter schools, including those operated by a municipality, 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 board of county commissioners 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 a 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 charter school, including one operated by a municipality, ceases to be used for public educational purposes and ownership of the facility has not reverted to the school board, the charter school 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 charter school 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 charter school ceases to be used for public educational purposes.

SECTION 2. SEVERABILITY.

If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. AREA EMBRACED.

This ordinance shall take effect in the unincorporated area of Brevard County, Florida and in any municipality which is described in section 62-817 of the Code of Ordinances of Brevard County, Florida, unless such municipality has adopted or in the future adopts an

ordinance electing to establish transportation impact fees, thereby opting out of the provisions of this moratorium ordinance.

SECTION 4. EFFECTIVE DATE.


This ordinance shall take effect upon filing with the Department of State within 10 days of the date of adoption of the ordinance, as provided by Section 125.66(3), Florida Statutes.

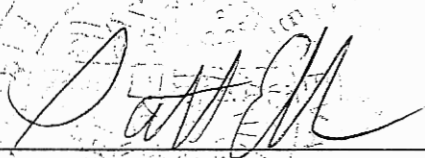
SECTION 5. INCLUSION IN THE CODE OF ORDINANCES.

This ordinance shall be included and be made a part of the Code of Ordinances of Brevard County, Florida, and the editors of that Code of Ordinances shall have the authority to re-number or re-letter any section in this ordinance to conform to the format used in the Code of Ordinances. Any editorial changes to the section numbers or section titles in this ordinance shall be deemed and interpreted as a non-substantive editorial changes that have no effect on any substantive provision in the ordinance.

DONE, ORDERED AND ADOPTED, in regular session, this fourth day of May, 2010.

ATTEST:





Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**

By: 

Robin Fisher, Vice Chairman
(as approved by the Board on May 4, 2010)