

ORDINANCE 2018-21

An ordinance of the Board of County Commissioners of Osceola County, Florida; Amending Chapter 24, Osceola County Code, entitled Impact Fees; Amending Article I, General Provisions; Amending Article III, Educational System Impact Fees; Providing for Severability; Providing for Conflict; Providing for Inclusion in the Code; Providing for an Effective Date; and Providing for a Grace Period.

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, including 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 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, Ordinance No. 10-11, and Ordinance No. 2015-16; and

WHEREAS, the Ordinance provides for certain exemptions from the Educational System Impact Fee, as set forth in Section 24-42 when there is sufficient justification to warrant an exemption; and

WHEREAS, Chapter 509, Florida Statutes, allows for construction and utilization of single-family and multi-family dwelling units to be operated as vacation rentals, as defined in Sections 509.242(1)(c) and 509.013(4), Florida Statutes, subject to local laws, ordinances, and regulations as further set forth in Section 509.103(7), Florida Statutes; and

WHEREAS, the Board, the City of Kissimmee, and the City of St. Cloud allow for construction and operation of vacation rentals (hereinafter “Vacation Villas”) subject to each jurisdiction's respective codes and regulations; and

WHEREAS, the Board has determined that the impacts to the Educational System created by Vacation Villas (as defined herein) are significantly less than those created by Residential Construction; and

WHEREAS, the Board recognizes that construction of Vacation Villas contributes greatly to the local economy through increases in local employment, generation of sales tax and tourist tax revenues, increases in property values and associated ad valorem revenues, and through other associated economic impacts generated by tourists who desire to stay in Vacation Villas due to their proximity to area attractions and the amenities such communities provide; and

WHEREAS, the Board further recognizes that Vacation Villas, when in compliance with the terms and conditions imposed herein, do not create impacts to the Educational System, unlike those that result from traditional Residential Construction; and

WHEREAS, Vacation Villas do not otherwise result in the need for increased funding for costs and improvements to the Educational System; and

WHEREAS, the Board finds that the exemption created herein for Vacation Villas is consistent with the Comprehensive Plan and furthers the interests of Osceola County residents; and

WHEREAS, Section 163.31801, Florida Statutes, imposes specific requirements on an impact fee adopted by ordinance, 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 collection of impact fees to actual costs, and a requirement that notice be provided no fewer than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee; and

WHEREAS, the Board has determined 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. Amendments to Chapter 24. Chapter 24, Osceola County Code, entitled Impact Fees, is hereby amended to read as follows:

ARTICLE I. GENERAL PROVISIONS

Section 24-2 shall be amended as follows:

Sec. 24-2. Definitions.

~~(28)~~ “(Short Term Rental)” shall mean any Dwelling Unit, or group of Dwelling Units located within Osceola County within a single development, which are designed for and intended to be used on a non-permanent basis by the Owner and intended for Transient occupancy. Non-permanent use shall be for a period of use by the same individual or individuals for no more than thirty (30) days within a twelve (12) month period.

~~(28)~~~~(29)~~ **“(Single-Family Detached Unit)”** shall mean a Dwelling Unit on an individual lot, including detached houses on lots less than fifty (50) feet wide, such as zero lot line homes.

~~(29)~~~~(30)~~ **“(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)~~~~(31)~~ **“(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.

~~(32)~~ **“(Transient Use” or “Transient Occupancy”** shall mean occupancy of a Dwelling Unit intended to be temporary by any person other than the Owner by concession, permit, right of access, license, gift, or other agreement, for a period of no more than thirty (30) consecutive days within a twelve (12) month period.

~~(31)~~(33) “Triplex” or “Three-Family Dwelling Unit” shall mean three (3) attached Dwelling Units in on a single lot.

(34) “Vacation Villas” shall mean any Dwelling Unit, or group of Dwelling Units located within a single complex, which are designed for and intended to be exclusively used for Transient Use or Transient Occupancy; or any unit or group of units in a condominium or co-operative, or any individually or collectively owned single family, two family, three family, or four family dwelling unit that is also a transient public lodging establishment but that is not a time-share project.

*The remainder of this Section is unchanged.
The remainder of this Article is unchanged.*

ARTICLE III. EDUCATIONAL SYSTEM IMPACT FEES

Section 24-36 is amended as follows:

Sec. 24-36. Findings.

(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~~December 4, 2017, which 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, and April 20, 2015. 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.

The remainder of this Section is unchanged.

Section 24-38 is amended as follows:

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~~December 4, 2017, 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.

Section 24-39 is amended as follows:

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~~ December 4, 2017, as shown below, identified as Option 1 therein. Future adjustments shall be made in accordance with Section 24-46 and 24-47.

<u>Residential Category</u>	<u>Unit</u>	<u>Calculated Impact Fees</u>		
		<u>Countywide</u>	<u>Vacation Villas</u>	<u>Short-Term Rentals</u>
<u>Single Family Detached</u>	<u>du</u>	<u>\$11,823</u>	<u>N/A</u>	<u>\$6,264</u>
<u>Townhouse</u>	<u>du</u>	<u>\$7,591</u>	<u>N/A</u>	<u>\$3,951</u>
<u>Multi-Family</u>	<u>du</u>	<u>\$11,362</u>	<u>N/A</u>	<u>\$7,033</u>
<u>Condominium</u>	<u>du</u>	<u>\$4,243</u>	<u>N/A</u>	<u>\$2,325</u>
<u>Mobile Home</u>	<u>du</u>	<u>\$7,672</u>	<u>N/A</u>	<u>\$7,672</u>

Section 24-41 is amended as follows:

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

(c) 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. However, the calculation may be based on a consideration that the permanent physical characteristics or limitations of the Dwelling Units within the Residential Construction will generate fewer students initially and during their useful life than the student generation assumptions used in the impact fee study.

The remainder of this Section is unchanged.

Section 24-42 is amended as follows:

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

(3) Subject to the availability of other School Board revenues to pay for this exemption, any Residential Construction that qualifies as Vacation Villas and meets the following requirements:

- a. Any Person seeking a Vacation Villas Exemption ("VV 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. Name and address of the Owner(s);
 2. Legal description of the Vacation Villas property;
 3. Evidence of compliance with applicable zoning and land use regulations;

4. Evidence that the Vacation Villas are not designed or intended for permanent occupancy, including but not limited to:
 - (a) the lack of availability of mail delivery services;
 - (b) regulations that preclude guests from occupying a specific unit for more than thirty (30) days within twelve (12) months of the stay;
 - (c) requirements for rental rate calculations to be made on a daily or weekly basis;
 - (d) sales and marketing materials that expressly provide that the permanent occupancy of a Vacation Villas is prohibited;
 - (e) a letter of commitment filed with the Developer's Application certifying the residential construction identified within the Developer Application will qualify as Vacation Villas and meet the exemption requirements of the Educational Impact Fee Ordinance;
 - (f) a filing fee of \$2,000.00;
 - (g) a recorded plat denoting the lot(s) to be identified as Vacation Villas;
 - (h) a single business tax receipt for each residential dwelling unit proposed for exemption. This requirement will need to be maintained each year of the exemption;
 - (i) a deed restriction that notifies the owners or prospective owners that because students are not to reside in the property, the School Board has no plans for transportation from the property;
 - (j) a deed restriction requiring the owners or prospective owners to sign an Owner Acknowledgement specifically providing that the lots are not eligible for homestead exemption for thirty (30) years; and
 - (k) a deed restriction providing that the articles of the deed restrictions relating to the School District may not be amended without the signed consent of the Superintendent for the School District of Osceola County, Florida.
 5. A copy of the proposed declaration of covenants and restrictions (the "Declaration") that runs with the land and contains the following provisions, which cannot be revoked or amended without permission from the School Board for a period of at least thirty (30) years from recording:
 - (a) Restrictions that require all of the Vacation Villas governed by the Declaration to be used exclusively for Transient Occupancy, with any use or occupancy being limited to no more than thirty (30) days or one (1) calendar month at a time within a twelve (12) month period, whichever is less, and
 - (b) Restrictions that authorize and require the property owner's association to pay to the School Board an amount equal to the applicable Educational System Impact Fee for a Dwelling Unit, in the event that a student under the age of nineteen (19) has been registered to attend school, and such registration indicates the student's residency is at a Vacation Villas.
- b. Upon written notification by the School Board that a student under the age of nineteen

(19) has been registered to attend school and is residing at a Vacation Villas, the property owner's association shall have sixty (60) calendar days from the date of the written notification in which to demonstrate to the School Board that the subject student registration was in error or, alternatively, that the subject student no longer resides in the Vacation Villas. Otherwise, payment of the Educational System Impact Fee shall be made by the property owner's association within ninety (90) calendar days from the date of the written notification.

The remainder of this Section is unchanged.

Section 24-46 is amended as follows:

Sec. 24-46. - Periodic impact fee rate adjustment.

- (b) 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:
- (1) 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 Consumer Price Index~~Engineering News-Records' building cost index~~.

The remainder of this Section is unchanged.

A new Section 24-48 is created as follows:

Sec. 24-48. Short Term Rental

Any Residential Construction that qualifies as Short Term Rental and meets the following requirements will be entitled to pay the reduced rate for a Short Term Rental dwelling unit as calculated in the latest School Impact Fee update study:

- a. Any person seeking the reduced Short Term Rental rate shall file with the Superintendent an Application for Short Term Rental prior to receiving a Building Permit for the proposed Residential Construction. The Application for Short Term Rental shall contain the following:
1. Name and address of the Owner(s);
 2. Legal description of the Short Term Rental property;
 3. Evidence that the Short Term Rental is to be or is being marketed for short-term stays. It is recommended that the services of a property management company are being offered by the Owner;
 4. Evidence that the design of the development discourages permanent residency by the lack of availability of mail delivery, no County residential universal garbage pick-up, increased resort-style amenities, increased parking considerations, and noise buffering;
 5. A copy of the proposed Declaration of Covenants and Restrictions that runs with the land and contains the following provisions, which cannot be revoked or amended for a period of thirty (30) years from recording

without permission from the School Board:

Restrictions stating that mailboxes or mail delivery shall not be available; garbage collection shall be provided by a commercial hauler and not part of the Osceola County residential garbage collection; a property or homeowner's association that oversees the increased amenities facilities; and language that sets out that the development is intended for non-permanent occupancy;

6. A letter of commitment filed with the Developer's Application certifying the residential construction identified within the Developer's Application will qualify as Short Term Rental and meet the reduced rate requirements of the Educational Impact Fee Ordinance;
 7. A filing fee of \$2,000.00;
 8. A recorded plat denoting the lot(s) to be identified as capable of being used for Short Term Rental;
 9. A deed restriction that notifies the owners or prospective owners that the property is not eligible for homestead exemption if used as a Short Term Rental; and
 10. A deed restriction providing that the articles of the deed restrictions relating to the School District may not be amended without the signed consent of the Superintendent for the School District of Osceola County, Florida.
- b. If the requirements above are met, the Superintendent shall issue a letter to the applicant and the jurisdiction that this development shall be charged the Short Term Rental rate for each dwelling unit.

The remainder of this Article is unchanged.

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 upon 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 March 12, 2018.

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 June 18, 2018.

(Signatures on Next Page)

PASSED AND ADOPTED by the Board of County Commissioners of Osceola County, at its duly noticed meeting this March 12, 2018.

BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

(seal)

By: _____

Chair/Vice Chair

Clerk of the Board