STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 2021-1761

AN ORDINANCE OF THE COUNTY COUNCIL OF LANCASTER COUNTY, SOUTH CAROLINA ("COUNCIL") ESTABLISHING AND ADOPTING A SCHOOL DEVELOPMENT IMPACT FEE ("IMPACT FEE") TO BE IMPOSED ON ALL NEW RESIDENTIAL DEVELOPMENT IN THE LANCASTER COUNTY SCHOOL PANHANDLE SERVICE AREA; TO ENSURE THAT SCHOOL FACILITY SYSTEM IMPROVEMENTS WILL BE AVAILABLE AND ADEQUATE TO ACCOMMODATE THE NEED EXPECTED TO BE GENERATED FROM THE SCHOOL CHILDREN IN NEW RESIDENTIAL DEVELOPMENTS IN THE PANHANDLE OF LANCASTER COUNTY SCHOOL SERVICE AREA BASED ON THE SCHOOL DISTRICT'S LEVEL OF SERVICE STANDARDS AND CAPITAL IMPROVEMENTS PLAN, AND TO ASSIGN THE COSTS OF SUCH PUBLIC SCHOOL FACILITIES ON A PROPORTIONATE SHARE BASIS TO NEW RESIDENTIAL DEVELOPMENT IN THE SERVICE AREA; AND ESTABLISHMENT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN LANCASTER COUNTY AND THE LANCASTER COUNTY SCHOOL DISTRICT, TO ENSURE PROPER IMPLEMENTATION AND ADMINISTRATION OF THE SCHOOL DEVELOPMENT IMPACT FEE ORDINANCE

WHEREAS, Lancaster County ("County") has experienced population growth in the Greater Panhandle area and projections indicate that population growth and development will continue at a reasonable rate into the future; and

WHEREAS, the County has experienced the impacts on public facilities resulting from this population growth and development; and

WHEREAS, Lancaster County is served by the Lancaster County Board of Education ("School Board"); and

WHEREAS, population and growth estimates for the School District over the next 10 years for the Panhandle area indicate there will be a need for additional classrooms and other school facilities due to population growth and development in that area; and

WHEREAS, the School Board has defined level of service standards for the Panhandle for kindergarten through eighth grade, minimum square feet for school buildings and land (by acres) per student; and

WHEREAS, these level of service standards and the projected residential development and student generation rates identify these school system improvement needs over the next 10 years; and

WHEREAS, the cost of these school system improvement needs (school buildings and land) is significant and expensive; and

WHEREAS, if bonds, backed only by property taxes, are used to finance these new school facility system improvements (school buildings and land) needed to accommodate the demand generated by new residential development in the Panhandle area of Lancaster County, they would be largely paid for by

existing residents who have already paid for much of the school facility system improvements needed to serve their school age children; and

WHEREAS, the County Council finds that it is fair and equitable for new residential development in Lancaster County Panhandle Service Area to fund new school facility system improvements, in part, through a proportionate share school development impact fee; and

WHEREAS, because all new residential development (single-family and multifamily dwelling units) in the Panhandle Service Area generates a demand for school facility system improvements based on the same student generation rate (K-8th grade – 0.263 students per single-family dwelling unit and 0.279 students per multifamily dwelling unit), the school development impact fee shall be imposed uniformly within that area on all new dwelling units (single-family and multifamily), as established by the student generation rates, regardless of size or density; and

WHEREAS, because non-residential development does not directly generate school children, the school development impact fee shall not be imposed on such development; and

WHEREAS, the County Council has given ample consideration to the provision and financing of school facility system improvements in the Panhandle, and has consulted with the School Board, it hereby finds and declares that the establishment and adoption of the school development impact fee imposed on new residential development is proportionate, and based on the School Board capital improvement plan for that Panhandle area that is based on the system improvements needed to provide school facilities to accommodate new residential development in that area, and current costs to provide the system improvements; and

WHEREAS, the County and the School Board is empowered to execute an intergovernmental agreement on the subject of school development impact fees; and

WHEREAS, the intergovernmental agreements, this Ordinance, and the impact fee procedures as set forth in the Development Impact Fee Procedures in Chapter 17 of the Code of Ordinances, Lancaster County, ensure that the school development impact fee monies collected and transferred to the School Board are spent for school facility system improvements identified in the School Board capital improvement plan for the Panhandle Service Area that are designed to serve the school age children of new residential development in that area; and

NOW, THEREFORE, BE IT ORDAINED by the County Council of Lancaster County, South Carolina that:

SECTION 1. ADOPTION AND IMPOSITION OF SCHOOL DEVELOPMENT IMPACT FEES.

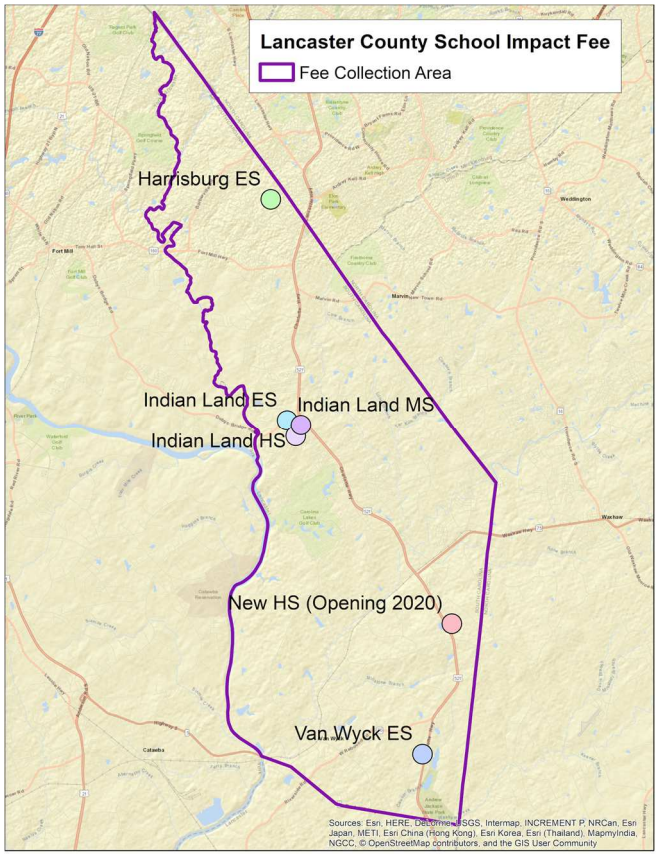
Pursuant to Ordinance No. 2021-1705 and the impact fee procedures in Chapter 17 of the Code of Ordinances, Lancaster County, this School development impact fee shall be adopted and imposed on all new development in the Panhandle Service Area, and the intergovernmental agreement between the County and the Lancaster County Board of Education ("School Board"), and other applicable provisions of the County Code, this school development impact fee shall be adopted and imposed on all new residential development (single-family and multifamily dwelling units) in the Panhandle Service Area, in accordance with the procedures and requirements of this Ordinance.

SECTION 2. ESTABLISHMENT OF LANCASTER COUNTY SCHOOL SERVICE AREA.

(a) The school development impact fee shall be calculated and imposed within the Lancaster County School Panhandle Service Area,

(b) The boundaries of the Lancaster County School Panhandle Service Area are identified in Figure 1: Lancaster County School Panhandle Service Area.

FIGURE 1: LANCASTER COUNTY SCHOOL PANHANDLE SERVICE AREA



SECTION 3. INCORPORATION OF SUPPORT STUDY

The County relies on the level of service standard, land use assumptions, methodologies, service units, system improvement costs, formula, and analyses for School development impact fees, and the capital improvement plan (CIP) for School facility system improvements set out in *Development Impact Fee Study* prepared by TischlerBise, dated March 18, 2021 (hereinafter "School development impact fee study"). The School development impact fee study sets forth a reasonable level of service standard, land use assumptions, methodologies, service units, system improvement costs, and formulas for determining the impacts of new development on School facility system improvement needs.

SECTION 4. IMPOSITION OF SCHOOL DEVELOPMENT IMPACT FEES

(a) The School development impact fee shall be imposed on all new development in the School Service Area, unless the development is exempted, or an exception or waiver is granted pursuant to Sec.17-9 of the County Code. If an exception or waiver is granted, the development impact fees which otherwise would have been due shall be provided by the School Board, using funds available for new residential growth needs from sources other than school development impact fees.

(b) The School development impact fee shall be paid prior to issuance of a building permit, or if a building permit is not required, prior to construction of the dwelling unit, or prior to issuance of a development permit for the dwelling unit, as appropriate.

SECTION 5. DEVELOPMENT IMPACT FEE SCHEDULE

(a) Pursuant to this Ordinance and in accordance with the impact fee procedures in Chapter 17 of the County Code, the State Development Impact Fee Act, and the School development impact fee study and CIP, School impact development fees shall be imposed in the School Service Area service.

(b) The following general procedure shall be followed upon receipt of an application for a building permit for new development:

1) For residential development, identify the type of housing development and number of dwelling units, and then calculate the fee based on the School Development Impact Fee Schedule;

(1) School Development Impact Fee Schedule Panhandle Service Area

TABLE 1: SCHOOL DEVELOPMENT IMPACT FEE SCHEDULE, LANCASTER COUNTY SCHOOL PANHANDLE SERVICE AREA	
DWELLING UNIT TYPE	**FEE**
Single Family	$8,202
Multifamily	$8,701

(c) Development Impact Fee Schedule Annual Update. The development impact fees shall be adjusted annually to reflect the effects of inflation on the costs for facilities set forth in the Development Impact Fee Study and CIP dated March 18, 2021. The fee schedule shall be adjusted using the Construction Cost Index calculated by the Engineering New Record (ENR). For each such adjustment, the development impact fees shall be multiplied by a fraction, the numerator of which is the ENR Construction Cost Index for the most recent month for which figures are available, and the denominator of which is the ENR Construction Cost Index for the period one year prior to the period reflected in the numerator. The impact fee schedule annual adjustment will become effective on July 1st of each year. If July 1st falls on a weekend or county holiday, the fee adjustment will become effective on the next business day thereafter

SECTION 6. INDIVIDUAL ASSESSMENT OF DEVELOPMENT IMPACT

(a) In-lieu of calculating the School development impact fees by reference to the fee schedule, a feepayer may request that the amount of the required School development impact fees be determined by reference to an Individual Assessment of Development Impact for the proposed development.

(b) If a feepayer requests the use of an Individual Assessment of Development Impact, the feepayer shall be responsible for retaining a qualified professional to prepare the Individual Assessment of Development Impact that complies with the requirements of this section, at the feepayer's expense.

(c) Each Individual Assessment of Development Impact shall be based on the level of service standard and the same system improvement costs for School facility system improvements used in the School development impact fee study and CIP, shall use the formula for calculating the development impact fee used in the School development impact fee study and CIP, and shall document the relevant methodologies and assumptions used (no adjustments in the assumption of credits shall be made). The burden shall be on the feepayer requesting the Individual Assessment of Development Impact to demonstrate by competent evidence that the data and assumptions used in the School development impact fee study and CIP and reflected in the School Development

Impact Fee Schedule, is less accurate than the results of the Individual Assessment of Development Impact.

(d) Each Individual Assessment of Development Impact shall be submitted to the Director or a designee, and may be accepted, rejected, or accepted with modifications by the Director or a designee as the basis for calculating School development impact fees. If an Individual Assessment of Development Impact is accepted or accepted with modifications by the Director or a designee as a more accurate measure of the demand for School facility system improvements created by the proposed new development than the applicable fees in the School Development Impact School Schedule, then the development impact fees due under this Ordinance shall be calculated according to such assessment.

SECTION 7. CREDITS

(a) Any developer/fee payor obligated to pay a school development impact fee under this section may apply for credit against school development impact fees otherwise due, up to but not exceeding the full obligation for the fees proposed to be paid pursuant to the provisions of this Ordinance for any construction or dedication of land for school facility system improvements that are accepted by the County Council and the School Board for systems improvements identified in the CIP.

(b) Valuation of Credits

1) Credit for land dedication for a school, at the fee payor's option, shall be valued at either (a) 100 percent of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) the fair market value of the land established by a private appraiser acceptable to the County Council and School Board in an appraisal paid for by the fee payor.

2) Credit for construction of a school building shall be valued by the County Council and School Board based on construction costs estimates submitted by the fee payor. The County Council, after consultation with the School Board, shall determine the amount of credit due based on the information submitted, or, if it determines the information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the County Council and School Board.

(c) When Credits Become Effective

1) Credits for land dedication for schools shall become effective after the credit is approved by County Council and the School Board pursuant to this section and a Credit Agreement/Development Agreement is entered into, and (a) the land has been conveyed to the School Board in a form established by the School Board at no cost to the School Board, and (b) the dedication of land has been accepted by the School Board.

2) Credits for construction of school buildings shall become effective after the credit is approved by County Council and School Board pursuant to this section, a Credit Agreement/Development Agreement is entered into, and (a) all required construction has been completed and has been accepted by the School Board, (b) a suitable maintenance and warranty bond has been received and approved by the School Board, and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable School Board requirements.

3) Credits for construction or dedication of land for school facility system improvements shall be transferable within the same development for school development impact fee purposes, but

shall not be transferable outside the development or used as credit against fees for other public facilities. Credit may be transferred pursuant to these terms and conditions by any written instrument that clearly identifies which credits issued under this section are to be transferred. The instrument shall be signed by both the transferor and transferee, and the document shall be delivered to the County Council and School Board for registration.

4) The total amount of the credit shall not exceed the amount of the school development impact fees due and payable for the project.

5) The County and School Board may enter into a Capital Contribution Front-Ending Agreement with any developer/fee payor who proposes to construct school facility system improvements in the CIP, to the extent the fair market value of the construction of those school facility system improvements exceed the obligation to pay school development impact fees for which a credit is provided pursuant to this section. The Capital Contribution Front-Ending Agreement shall provide proportionate and fair share reimbursement linked to new growth and development's use of the school facility system improvements constructed.

6) If the offer for credit is approved, a Credit Agreement/Development Agreement shall be prepared and signed by the applicant and the County Council and School Board. The Credit Agreement/Development Agreement shall specifically outline the construction of school buildings or land dedication for schools, the time by which they shall be completed or dedicated, and any extensions thereof, and the value (in dollars) of the credit against the school development impact fees the fee payor shall receive for the construction of school buildings or the dedication of land.

SECTION 8. TRUST FUND FOR SCHOOL DEVELOPMENT IMPACT FEES

The County hereby establish segregated School Development Impact Fee Trust Fund Accounts. All school development impact fees collected by the County for school development impact fees shall be placed in their respective Trust Fund Account. Prior to December 1 of each year, the County shall transfer all school development impact fees received and collected to the School Board. The Trust Fund shall be an interest-bearing account and all interest earned and accruing to the account shall become funds of the account, subject to the same limitations and restrictions on use and expenditure of funds that are applicable to school development impact fee funds.

SECTION 9. EXPENDITURE OF FEES FOR SYSTEM IMPROVEMENTS

School development impact fee funds transferred to the School Board by the County shall be used by the District in accordance with the County impact fee procedures in Chapter 17 of the County Code, solely and exclusively for school facility system improvements as set forth in the school support study and CIP. System improvements generally include the following: school buildings and land for public kindergarten through eighth grade schools that are designed to expand school system capacity.

SECTION 10. DEVELOPMENT AGREEMENT OPTION

(a) A developer may pay the school facilities development impact fee as calculated pursuant to Section 5. Development Impact Fee Schedule, as the proposed development project's proportionate share of school facility system improvement costs and as full and complete payment of such obligations, or in the alternative, the developer may enter into an agreement with the County pursuant to the State Local Government Development Agreement Act, and provide for dedication of land or

construction of school buildings or for payments in-lieu of school development impact fees for school facility system improvements.

(b) A school development impact fee may not be imposed on a developer who has entered into a development agreement with the County who provides for the school facility system improvement needs of the developer's development project that is subject to the development agreement.

(c) A development agreement for school facility system improvements in accordance with this section may only be entered into with the authorization and approval of both the County and the developer, and after consultation with the School Board.

SECTION 11. DEVELOPER RIGHTS

The developer, pursuant to the State Development Impact Fee Act and the county impact fee procedures as set forth in Chapter 17 of the County Code, shall have the following rights, any or all of which may be exercised only in accordance with the impact fee procedures as set forth in Section 17-8, of the County Code

(a) Administrative Appeal. The developer/applicant may file an administrative appeal with the County Administrator with respect to a County decision related to the imposition, calculation, collection, processing, or expenditure of a school development impact fee, at any time; provided, however, that such appeal must comply with the provisions and requirements of the County impact fee procedures in Section 17-7, of the County Code. If the appeal follows payment of the development impact fee, it must be made within 30 days of the date of fee payment. The filing of an appeal will immediately halt the impact fee process, unless the developer/applicant posts a bond or submits an irrevocable letter of credit for the full amount of the impact fees as calculated by the County.

(b) Payment under Protest. The developer/applicant may pay the County-calculated school development impact fees under protest, pursuant to the County impact fee procedures as set forth in Section 17-7, of the County Code. Payment under protest does not preclude the developer/applicant from filing an administrative appeal nor from requesting a refund, nor from posting a bond or submitting an irrevocable letter of credit for the amount of the development impact fee due, all as set forth in the impact fee procedures as set forth in Section 17-7.

(c) Mediation. The developer/applicant may request mediation by a qualified independent party, but only upon voluntary agreement by both the developer/applicant (fee payor) as well as the County and only to address a disagreement related to the school development impact fees, as calculated by the County, for the proposed development. Neither request for, nor participation in, mediation shall preclude the developer/applicant (fee payor) from pursuing other developer rights and/or remedies, as set forth in this Ordinance, the County impact fee procedures as set forth in Section 17-7, of the County Code, or other remedies available by law.

SECTION 12. COUNTY REMEDIES

(a) The County, pursuant to the State Development Impact Fee Act and the County impact fee procedures as set forth in Chapter 17 of the County Code shall have all of the following remedies, which may be exercised individually or collectively, but only in accordance with the impact fee procedures as set forth in Section 17-8 of the County Code.

1) Interest and Penalties. The County may, at its discretion, add reasonable interest and penalties for nonpayment or late payment to the amount of the calculated school development impact fees due, pursuant to the impact fee procedures as set forth in Section 17-8 of the County Code.

2) Withholding Building or Development Permit or Development Approval or Certificate of Occupancy. The County may withhold a certificate of occupancy, a building or development permit, or development approval, as may be applicable, until full and complete payment has been made by the developer/applicant of the school development impact fees due.

3) Lien. The County may impose a lien on the developer's property, pursuant to the impact fee procedures as set forth in Section 17-8 of the County Code, for failure of the developer/applicant to timely pay the required school development impact fees in full.

(b) The County may pursue any one or all of the remedies described in subsection (a) of this section at its discretion. The failure to pursue any remedy or remedies, at any time, shall not be deemed to be a waiver of County rights to pursue any remedy or remedies at such other time as may be deemed appropriate.

SECTION 13. INTERGOVERNMENTAL AGREEMENTS

Prior to imposition of a school development impact fee pursuant to this Ordinance, the County and the School Board shall enter into an intergovernmental agreement, and the County and participating municipalities shall enter into intergovernmental agreements, which intergovernmental agreements shall:

(a) Specify the reasonable share of funding of joint system improvements for school facility system improvements by each governmental unit;

(b) Provide for the collection of the school development impact fee by the municipality within its corporate limits and by the County within the unincorporated area;

(c) Provide for the timely transfer of school development impact fee revenues from the municipality to the County, and then the transfer of the fees collected by the participating municipalities and the County to the School Board; and

(d) Provide for the timely expenditure of the school development impact fee revenues by the School Board, in accordance with the CIP.

SECTION 14. TERMINATION OF THE SCHOOL DEVELOPMENT IMPACT FEES.

The school development impact fees shall be terminated upon the completion/conclusion of all of the school development impact fee-funded school facility system improvements, as set forth in the CIP, unless:

(a) The School Board adopts a capital improvements plan for a subsequent time period for the Lancaster County School Panhandle Service Area; or

(b) The County adopts an updated school development impact fee pursuant to the substantive and procedural requirements of the State Development Impact Fee Act.

SECTION 15. LIBERAL CONSTRUCTION.

The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes in the interest of furthering, promoting, and protecting the public health, safety, and welfare.

SECTION 16. CONFLICT.

To the extent of any conflict between other County ordinances and this ordinance, this Ordinance shall be deemed controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing County Ordinance, resolution, or regulation.

SECTION 17. SEVERABILITY.

(a) If any section, subsection, sentence, clause, phrase, or portion of these Procedures is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion of these Procedures shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of these Procedures nor impair or nullify the remainder of such Procedures which shall continue in full force and effect.

(b) If the application of any provision of these Procedures to any new development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the County Council is that such decision shall be limited to the specific new development immediately involved in the controversy, action, or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify these Procedures as a whole or the application of any provision of these Procedures to any other new development.

SECTION 18. EFFECTIVE DATE.

(a) This Ordinance shall become effective on ____, 2022, provided, however, that the school development impact fee for new development within the Panhandle Service Area shall only be effective upon the date that the County and School Board have entered into the intergovernmental agreement required by Section 13.

(b) Applications for new residential development filed after the effective date as set forth in this section shall be subject to the school development impact fee.

(c) If a development project has received approval of a site-specific development plan, as defined in S.C. Code §6-29-1520, prior to the effective date of this ordinance, the development is not subject to the school development impact fee.

<SIGNATURE PAGE FOLLOWS>

ADOPTED this __day of _____, 2021

COUNTY COUNCIL OF LANCASTER COUNTY
By:_____
Steve Harper, Chairman

By:_____
Billy Mosteller, Secretary

ATTEST:

_____
Sherrie Simson, Clerk to Council

First Reading:	August 9, 2021
Second Reading	August 23, 2021
Third and Final Reading	September 13, 2021
Public Hearing	August 23, 2021

Approved as to form:

_____
John DuBose, County Attorney