



# FLAGLER BEACH CITY COMMISSION

Item No: 10

**Meeting Date:** June 23, 2022

**Issue:** Consider an Interlocal Agreement between Flagler County, Beverly Beach, Bunnell, Marineland, Palm Coast, and the City of Flagler Beach for the collection of "Emergency Medical Services Impact Fee" on behalf of the County prior to or coincident with the issuance of building permits by the respective Municipalities for applicable capital construction within the respective jurisdictions.

**From:** Summary provided by Penny Overstreet, City Clerk

**Organization:**

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**RECOMMENDATION:** Approve the Interlocal Agreement

**BACKGROUND:** The impact fee would help fund capitol coast related to the provision of emergency medical services.

**BUDGETARY IMPACT:** The Interlocal Agreement has built in accommodations for the City to retain and administrative costs for the processing and remittance of the impact fees collected.

**LEGAL CONSIDERATIONS/SIGN-OFF:** Attorney Smith has reviewed the documents.

**PERSONNEL:**

**POLICY/REQUIREMENT FOR BOARD ACTION:** Commission approve as submitted or make recommended changes for the County Growth Manager to take back to the BOCC.

**IMPLEMENTATION/COORDINATION:**

Attachments

- **Flagler County Impact Fee Ordinance with legal advertisement (provided with Item 9)**
- **Correspondence between Flagler County and staff**

FLAGLER COUNTY IMPACT FEES  
INTERLOCAL AGREEMENT JURISDICTION LISTING

IMPACT FEE	JURISDICTION						
	Flagler County	Beverly Beach	Bunnell	Flagler Beach	Flagler Schools	MarineLand	Palm Coast
Educational Facilities	X		X	X	X		X
Emergency Medical Services	X	X	X	X		X	X
Fire Rescue	X	X	X			X	
Law Enforcement	X	X				X	X
Library	X	X	X	X		X	X
Parks and Recreational Facilities	X	X	X			X	
Transportation	X	X				X	

**INTERLOCAL AGREEMENT  
FOR THE COLLECTION OF THE FLAGLER COUNTY EMERGENCY MEDICAL SERVICES IMPACT FEE**

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the COUNTY OF FLAGLER, a political subdivision of the State of Florida (hereafter referred to as "County"), whose address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110, the TOWN OF BEVERLY BEACH, a municipal corporation of the State of Florida (hereafter referred to as "Beverly Beach"), whose address is 2735 North Oceanshore Boulevard, Flagler Beach, Florida 32136, the CITY OF BUNNELL, a municipal corporation of the State of Florida (hereafter referred to as "Bunnell"), whose address is 604 East Moody Boulevard, Unit 6, Bunnell, Florida 32110, the CITY OF FLAGLER BEACH, a municipal corporation of the State of Florida (hereafter referred to as "Flagler Beach"), whose address is 105 South 2nd Street, Flagler Beach, Florida 32136, the TOWN OF MARINELAND, a municipal corporation of the State of Florida (hereafter referred to as "Marineland"), whose address is 9507 North Oceanshore Boulevard, St. Augustine, Florida 32080, and the CITY OF PALM COAST, a municipal corporation of the State of Florida, (hereafter referred to as "Palm Coast"), whose address is 160 Lake Avenue, Palm Coast, Florida 32164, with each of the municipalities separately referred to as "Municipality" and the municipalities collectively referred to as "Municipalities", and County and Municipalities separately referred to as "party" and collectively referred to as "parties" herein.

**WITNESSETH**

**WHEREAS**, on December 6, 2021, Flagler County adopted Ordinance No. 2021-09, known as the Comprehensive Impact Fee Ordinance ("Ordinance"), and as codified in the County's Code of Ordinances;

**WHEREAS**, County's adoption of the Ordinance provided, among other things, that an impact fee would be put in place that would help to fund the capital costs related to the provision of emergency medical services ("Emergency Medical Services Impact Fee");

**WHEREAS**, the Florida Interlocal Cooperation Act of 1969 ("Act") set forth in Florida Statutes Section 163.01 et seq. contemplates Interlocal Agreements between governmental entities;

**WHEREAS**, the purpose of the Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;

**WHEREAS**, Section 17-6 of the Ordinance provides for the establishment of the terms and conditions for the implementation and enforcement of the Ordinance within the Municipalities through an Interlocal Agreement;

**WHEREAS**, the purpose of this Interlocal Agreement is to establish procedures for the County's collection and distribution of impact fees generated from development activity within the Municipalities;

**WHEREAS**, it is in the mutual interest of the County and the Municipalities to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the County, including, but not limited to, the development and construction of community projects and the provision of public services in an efficient and equitable manner;

**WHEREAS**, the County and the Municipalities find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

**WHEREAS**, the County and the Municipalities desire to delineate their respective rights and obligations as set forth below.

**NOW, THEREFORE**, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**Section 1. Recitals and Authority.** The foregoing recitals are true and correct and, by this reference, are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including, but not limited to, Chapters 125, 163, and 166, Florida Statutes, and the Florida Constitution.

**Section 2. Agreement by the Parties.**

**a. Establishment of Emergency Medical Services Impact Fee.** An Emergency Medical Services Impact Fee has been established through the adoption of the Ordinance. The Ordinance provides for the setting of the Emergency Medical Services Impact Fee, including legislative findings and administrative procedures for the collection and expenditure of Emergency Medical Services Impact Fee funds. To the extent possible and as provided in this Agreement and the Ordinance, the Ordinance shall control as to the legal authority of the Municipalities to collect the Emergency Medical Services Impact Fee on behalf of the County.

b. **Collection of Emergency Medical Services Impact Fee.** It is agreed by the parties that the Municipalities will collect the Emergency Medical Services Impact Fee on behalf of the County prior to or coincident with the issuance of building permits by the respective Municipalities for applicable capital construction within their respective jurisdictions. The Municipalities shall maintain the collected Emergency Medical Services Impact Fees separate and distinct from all other revenues. The rate for the Emergency Medical Services Impact Fee to be collected shall be as follows:

ITE LUC	Land Use	Unit	EMS
<b>RESIDENTIAL:</b>			
210	Single Family (Detached)	du	\$62
221	Multi-Family	du	\$32
240	Mobile Home (Mobile Home Park for Roads)	du	\$45
<b>TRANSIENT, ASSISTED, GROUP:</b>			
253	Congregate Care Facility	du	\$57
310	Hotel	room	\$37
320	Motel	room	\$31
620	Nursing Home	bed	\$41
<b>RECREATIONAL:</b>			
411	Public Park	acre	\$2
416	RV Park	site	\$18
420	Marina	berth	\$5
430	Golf Course	hole	\$31
445	Movie Theater	screen	\$194
492	Health/Fitness Club	1,000 sf	\$90
<b>INSTITUTIONAL:</b>			
520	Elementary School (Private)	student	\$4
522	Middle/Junior High School (Private)	student	\$3
525	High School (Private)	student	\$3
540	University/Junior College (7,500 or fewer students) (Private)	student	\$4
550	University/Junior College (more than 7,500 students) (Private)	student	\$3
560	Church	1,000 sf	\$15
565	Day Care Center	1,000 sf	\$30
<b>MEDICAL:</b>			
610	Hospital	1,000 sf	\$49
<b>OFFICE:</b>			
710	General Office	1,000 sf	\$37
714	Corporate Headquarters Building	1,000 sf	\$36
720	Medical Office 10,000 sq ft or less	1,000 sf	\$45
720	Medical Office greater than 10,000 sq ft	1,000 sf	\$64

<b>RETAIL:</b>			
822	Retail/Shopping Center 40,000 sfgla of less	1,000 sfgla	\$78
821	Retail/Shopping Center 40,001 to 150,000 sfgla	1,000 sfgla	\$97
820	Retail/Shopping Center greater than 150,000 sfgla	1,000 sfgla	\$53
840/841	New/Used Auto Sales	1,000 sf	\$59
849	Tire Superstore	bay	\$79
850	Supermarket	1,000 sf	\$92
851	Convenience Market - 24 hrs	1,000 sf	\$239
862	Home Improvement Superstore	1,000 sf	\$73
880/881	Pharmacy/Drug Store with & without Drive-Thru	1,000 sf	\$69
890	Furniture Store	1,000 sf	\$12
<b>SERVICES:</b>			
911	Bank/Savings Walk-In	1,000 sf	\$44
912	Bank/Savings Drive-In	1,000 sf	\$55
931	Quality Restaurant	1,000 sf	\$215
932	High-Turn Over Restaurant	1,000 sf	\$203
934	Fast Food Restaurant w/Drive-Thru	1,000 sf	\$363
941	Quick Lubrication Vehicle Shop	bay	\$60
942	Automobile Care Center	1,000 sf	\$62
944	Gas Station w/Convenience Store <2,000 sq ft	fuel pos.	\$55
945	Gas Station w/Convenience Store 2,000-5,499 sq ft	fuel pos.	\$86
960	Gas Station w/Convenience Store 5,500+ sq ft	fuel pos.	\$112
n/a	Gasoline/Convenience w/Fast Food	1,000 sf	\$298
<b>INDUSTRIAL:</b>			
110	General Light Industrial	1,000 sf	\$18
130	Industrial Park	1,000 sf	\$13
140	Manufacturing	1,000 sf	\$21
150	Warehousing	1,000 sf	\$4
151	Mini-Warehouse	1,000 sf	\$1

c. **Administrative Costs.** In accordance with Section 163.31801, Florida Statutes, the Florida Impact Fee Act, it is agreed by the parties that the Municipalities may retain the actual costs incurred in collecting the Emergency Medical Services Impact Fee, as an administrative charge to defray the costs of collecting and administering the Emergency Medical Services Impact Fee. Each Municipality is responsible for maintaining records reflecting the actual costs incurred as the basis of the administrative fee retained by the Municipality.

d. **Remittance of Emergency Medical Services Impact Fee.** The Municipalities shall remit the collected Emergency Medical Services Impact Fees minus the administrative fee to the County on a quarterly basis, with the transfer of funds to occur on or

before the fifteenth (15th) day of the month immediately following the end of the quarter, i.e., by April 15th for the First Quarter, by July 15th for the Second Quarter, by October 15th for the Third Quarter, and by January 15<sup>th</sup> for the Fourth Quarter. Remittance may be through wire transfer to the Clerk of Court, through check payable to the Flagler County Board of County Commissioners, or through other method mutually agreed to between the Municipality as payor and the County as payee.

Each Municipality shall, in addition to the quarterly transfer of the Emergency Medical Services Impact Fees, remit to the County a report accounting for the total Emergency Medical Services Impact Fees collected for the quarter and the administrative fees retained by the Municipality. The reports shall specify the dates the fees were paid, the location of the properties for which the building permits were issued, the names and addresses of the applicants, the type/use of structures for which the building permits were issued, and the amount of the Emergency Medical Services Impact Fees paid. Should no Emergency Medical Services Impact Fees be collected for the quarter, the Municipality shall report to the County that no Emergency Medical Services Impact Fees are to be remitted because no Emergency Medical Services Impact Fees were collected by the Municipality.

**e. Expenditure of Emergency Medical Services Impact Fee Funds.** Emergency Medical Services Impact Fee funds collected by the Municipalities shall be received, retained, and expended by the County in accordance with the Ordinance. The County is responsible for maintaining records reflecting the expenditures of the Emergency Medical Services Impact Fee funds.

**f. Developer Contribution Credits in Lieu of Payment of Emergency Medical Services Impact Fee.** As provided in Florida Statutes, a Municipality must credit against the collection of the Emergency Medical Services Impact Fee any contribution, whether identified in a proportionate fair share agreement or other form of exaction, related to emergency medical services public facilities or infrastructure, including land, apparatus, vehicle, or equipment dedication, site planning and design, or construction. For purposes of this subsection, the Municipality shall provide the County with a detailed description of the contribution and its corresponding fair market value. The Municipality shall issue the credit to the developer on a dollar-for-dollar basis to reduce any Emergency Medical Services Impact Fee for which the contribution was made. Evidence of the credit to the developer shall be provided by the Municipality to the County on a quarterly basis.

**Section 3. Indemnification.** To the extent permitted by law, each party agrees to indemnify and hold the other parties harmless from and against any and all damages, losses or

claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to any party's actions, omissions or negligence in its performance under this Interlocal Agreement. Nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or limits of liability of any party, including their supervisors, officers, agents and employees, beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute, and nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law. Nothing in this Agreement is intended, nor shall be construed, to confer any rights or benefits upon any party other than Municipalities and County.

**Section 4. Default.** A default by any party under this Interlocal Agreement shall entitle the other parties, separately or collectively, to all remedies available at law or in equity, which may include, but not be limited to, damages, injunctive relief and specific performance. Each of the parties hereto shall give the other parties written notice of any defaults hereunder and shall allow the defaulting party or parties not less than fifteen (15) days from the date of receipt of such notice to cure monetary defaults and thirty (30) days to cure other defaults.

**Section 5. Disputes/Enforcement.** All disputes under this Interlocal Agreement shall be governed in accordance with the requirements of Chapter 164, Florida Statutes. In the event that any party seeks to enforce this Interlocal Agreement by court proceedings or otherwise, then the prevailing party or parties shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

**Section 6. Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be construed or deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

**Section 7. Interpretation.** This Interlocal Agreement has been negotiated fully between the parties as an arm's length transaction. All parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, all parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party. The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

**Section 8. Employee Status.** Persons employed by one party in the performance of services and functions pursuant to this Agreement shall not be deemed to be employees of



another party nor shall they have any claim to pension, worker's compensation, civil service, or other employee rights or privileges granted by another party to its officers and employees.

**Section 9. Waiver.** A waiver by any party of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making of a payment by a Municipality or the acceptance thereof by the County with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**Section 10. Entire Agreement and Amendment.** This instrument constitutes the entire Agreement between the parties and supersedes all discussions, understandings and agreements. Any modifications of the terms of this Agreement shall be in a written instrument executed by the parties.

**Section 11. Time is of the Essence.** The parties agree that time is of the essence with respect to this Interlocal Agreement.

**Section 12. Notice.** Each party shall furnish to the other parties such notice, as may be required from time to time, pursuant to this Interlocal Agreement, in writing, posted in the U.S. Mail certified, by hand delivery, or by overnight delivery service and addressed as follows:

**FOR FLAGLER COUNTY:**

Flagler County Board of County Commissioners  
Attn: County Administrator  
1769 East Moody Boulevard, Building 2  
Bunnell, Florida 32110

With copy to: Flagler County Board of County Commissioners  
Attn: County Attorney  
1769 East Moody Boulevard, Building 2  
Bunnell, Florida 32110

**FOR TOWN OF BEVERLY BEACH:**

Town of Beverly Beach  
Attn: Town Clerk  
2735 North Oceanshore Boulevard  
Flagler Beach, Florida 32136

With copy to: Conner Bosch Law, P.A.  
Attn: William J. Bosch, Town Attorney  
4488 North Oceanshore Boulevard  
Palm Coast, Florida 32137

**FOR CITY OF BUNNELL:**

City of Bunnell  
Attn: City Manager  
604 East Moody Boulevard  
Unit 6  
Bunnell, Florida 32110

With copy to: Vose Law Firm, LLP  
Attn: Wade C. Vose, City Attorney  
324 West Morse Boulevard  
Winter Park, Florida 32789

**FOR CITY OF FLAGLER BEACH:**

City of Flagler Beach  
Attn: City Manager  
105 South 2nd Street  
Flagler Beach, Florida 32136

With copy to: Shepard, Smith, Kohlmyer & Hand, P.A.  
Attn: Drew Smith, City Attorney  
2300 Maitland Center Parkway  
Suite 100  
Maitland, Florida 32751

**FOR TOWN OF MARINELAND:**

Town of Marineland  
Attn: Town Manager  
9507 North Oceanshore Boulevard  
St. Augustine, Florida 32080

With copy to: Dennis K. Bayer, Esq.  
109 South 6th Street  
Suite 200  
Flagler Beach, FL 32136

**FOR CITY OF PALM COAST:**

City of Palm Coast  
Attn: City Manager  
160 Lake Avenue  
Palm Coast, Florida 32164

With copy to: Garganese, Weiss, D'Agresta & Salzman, P.A.  
Attn: William E. Reischmann, Jr., City Attorney  
111 North Orange Avenue  
Suite 2000  
Orlando, Florida 32801

Except as otherwise provided in this Agreement, any notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving notice contained in this Agreement would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which notices shall be sent by providing the same upon fifteen (15) days written notice to the parties and addressees set forth herein.

**Section 13. Effective Date.** This Interlocal Agreement and the rights conferred herein shall not become effective until executed by the last party listed herein. Upon the effective date,

this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Flagler County, Florida, in accordance with the requirements of Subsection 163.01(11), Florida Statutes, which date shall be set forth in the first paragraph of this Interlocal Agreement at recording.

**Section 14. Term of Interlocal Agreement.** The term of this Interlocal Agreement shall commence upon the Effective Date and remain effective until amended or rescinded by the parties.

**REMAINDER OF PAGE INTENTIONALLY BLANK  
SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the COUNTY OF FLAGLER as a party hereto affix their hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2022.

**COUNTY OF FLAGLER, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Tom Bexley, Clerk of the Circuit  
Court and Comptroller

\_\_\_\_\_  
Joseph F. Mullins, Chair

Approved as to form and legality:

\_\_\_\_\_  
Al Hadeed, County Attorney

IN WITNESS WHEREOF, the TOWN OF BEVERLY BEACH as a party hereto affix their hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**TOWN OF BEVERLY BEACH, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Jim Ardell, Town Clerk

\_\_\_\_\_  
Stephen Emmett, Mayor

Approved as to form and legality:

\_\_\_\_\_  
William J. Bosch, Town Attorney

IN WITNESS WHEREOF, the CITY OF BUNNELL as a party hereto affix their hand and seal  
this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**CITY OF BUNNELL, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Kristen Bates, City Clerk

\_\_\_\_\_  
Catherine Robinson, Mayor

Approved as to form and legality:

\_\_\_\_\_  
Wade C. Vose, City Attorney

IN WITNESS WHEREOF, the CITY OF FLAGLER BEACH as a party hereto affix their hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**CITY OF FLAGLER BEACH, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Penny Overstreet, City Clerk

\_\_\_\_\_  
Suzie Johnston, Mayor

Approved as to form and legality:

\_\_\_\_\_  
Drew Smith, City Attorney



IN WITNESS WHEREOF, the TOWN OF MARINELAND as a party hereto affix their hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**TOWN OF MARINELAND, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Angela TenBroeck, Mayor

Approved as to form and legality:

\_\_\_\_\_  
Dennis Bayer, Town Attorney

IN WITNESS WHEREOF, the CITY OF PALM COAST as a party hereto affix their hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Virginia Smith, City Clerk

\_\_\_\_\_  
David Alfin, Mayor

Approved as to form and legality:

\_\_\_\_\_  
William E. Reischmann, Jr., City Attorney

Return to:  
City Clerk  
City of Flagler Beach  
105 S. Second Street  
Flagler Beach, Florida

#11

**SECOND AMENDMENT TO CITY OF FLAGLER BEACH/PALM COAST  
INTERLOCAL AGREEMENT RELATING TO BULK POTABLE WATER  
SALE AND SHARED UTILITY CUSTOMERS**

THIS SECOND AMENDMENT to the City of Flagler Beach/Palm Coast Interlocal Agreement Relating to Bulk Potable Water Sale and Shared Utility Customers dated August 1, 2006 and recorded at Book 1472, Page 437 in the Official Records of Flagler County, Florida, (the "Agreement") is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

***WITNESSETH:***

**WHEREAS**, Section 3(a) of the Agreement provides that the City of Flagler Beach shall purchase from the City of Palm Coast bulk potable water service to service those customers located within the area identified as Area "B" on the map attached to the Agreement; and

**WHEREAS**, since the initial adoption of the Agreement, the City of Palm Coast has experienced substantial growth resulting in greater demand upon the City of Palm Coast's water production within its service areas; and

**WHEREAS**, since the adoption of the Agreement, no customers have existed and no development has occurred within the area identified in said Agreement as "Area B;" and

**WHEREAS**, the City of Flagler Beach has recently approved new development within the shared service area identified in the Agreement Relating to Bulk Potable Water Sale and Shared Utility Customers as "Area B;" and

**WHEREAS**, the City of Flagler Beach has available capacity to service new development within "Area B" and the City of Palm Coast has no objection to the City of Flagler Beach providing its own water to said area which is located within the City of Flagler Beach; and

**WHEREAS**, during the connection of infrastructure to the City of Flagler Beach supply network, the City of Palm Coast is agreeable to providing temporary water service for construction purposes to the City of Flagler Beach in accordance with the Agreement; and

**WHEREAS**, at the time of original adoption of the Agreement, there were portions of "Area B" which were unincorporated Flagler County causing the Agreement to reference properties within "Area B" "not located within the City of Palm Coast;" and

**WHEREAS**, there are no longer unincorporated Flagler County portions of "Area B", all of Area "B" is within the jurisdiction of the City of Flagler Beach, thus, causing the original language to be confusing; and