



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.4.

7/7/2020

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### Subject:

Approval RE: Legislative Intent to Amend Impact Fee Ordinances

### Fiscal Impact:

Implementation of the proposed amendments to the County's impact fee ordinances should not have any fiscal impact on the County or the development community with the exception of the inclusion of incentives to promote the construction of affordable housing. The fiscal impact of the affordable housing incentives cannot be determined but would likely have a minimal effect on the overall impact fee revenue streams because only a limited number of qualifying projects are expected to occur in any given fiscal year.

### Dept/Office:

Planning and Development

### Requested Action:

It is requested that the Board of County Commissioners approve the legislative intent to amend Chapter 62 - Land Development Regulations; Article V - Impact Fees; Division 2 - Fire/Rescue Facilities; Division 3 - Correctional Facilities; Division 4 - Transportation; Division 5 - Emergency Medical Services Facilities; Division 6 - Library Facilities; Division 7 - Educational Facilities; and Chapter 94 - Solid Waste; Article IV - Special Assessments, Service Fees, and Impact Fees; Division 3 - Impact Fees to include new requirements enacted by the State and incorporated into Chapter 163.31801, Florida Statutes; clarify the requirement to obtain a proof of payment receipt prior to a municipality issuing a certificate of occupancy or certificate of completion; and amend the impact fee ordinances to include incentives for affordable housing including rental properties affordable to lower income residents.

### Summary Explanation and Background:

With the exception of the Educational Facilities Impact Fee Ordinance, the various impact fee ordinances have not been amended in more than a decade and do not specifically address the requirements imposed on impact fee programs by Chapter 163.31801, Florida Statutes.

In the recently concluded legislative session, the Legislature enacted new requirements in this section of Florida Statutes that become effective July 1, 2020. These new requirements include a provision that new impact fees or increased impact fee rates may not be applied to any permit application that was received prior to the effective date of the ordinance and a provision that allows impact fee credits to be assignable or transferable to another development parcel within the same benefit district.

The intent of the proposed amendments is to more specifically describe:

1. How actual costs for impact fee administration will be calculated;
2. That new impact fees or increased impact fee rates may not be imposed on any application for a building permit that was received by the local government prior to the effective date of the ordinance that imposed these new or increased impact fees;
3. That impact fee credits may be assigned or transferred to another development parcel within the same impact fee benefit district; and
4. To clarify that impact fee proof of payment receipts are required before a participating municipality can issue a certificate of occupancy or certificate of completion.
5. To amend the Correctional, Educational, Emergency Medical Services, Fire/Rescue, Library and Transportation Impact Fee ordinances to include a uniform method of incentives for development of affordable housing that addresses both single-family homeownership and rental developments affordable to lower income residents.

### **Clerk to the Board Instructions:**



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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July 8, 2020

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item F.4., Approval Re: Legislative Intent to Amend Impact Fee Ordinances

The Board of County Commissioners, in regular session on July 7, 2020, approved the legislative intent to amend Chapter 62 – Land Development Regulations; Article V – Impact Fees; Division 2 – Fire/Rescue Facilities; Division 3 – Correctional Facilities; Division 4 – Transportation; Division 5 – Emergency Medical Services Facilities; Division 6 – Library Facilities; Division 7 – Educational Facilities; and Chapter 94 – Solid Waste; Article IV – Special Assessments, Service Fees, and Impact Fees; Division 3 – Impact Fees to include new requirements enacted by the State and incorporated into Chapter 163.31801, Florida Statutes; clarify the requirement to obtain a proof of payment receipt prior to a municipality issuing a Certificate of Occupancy or Certificate of Completion; and amended the impact fee ordinances to include incentives for affordable housing including rental properties affordable to lower income residents.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*for: Donna Scott*  
Kimberly Powell, Deputy Clerk

/sm

cc: County Manager  
County Attorney

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1  
2 An act relating to impact fees; amending s. 163.31801,  
3 F.S.; prohibiting new or increased impact fees from  
4 applying to certain applications; providing that  
5 impact fee credits are assignable and transferable  
6 under certain conditions; providing an effective date.  
7

8 Be It Enacted by the Legislature of the State of Florida:  
9

10 Section 1. Section 163.31801, Florida Statutes, is amended  
11 to read:

12 163.31801 Impact fees; short title; intent; minimum  
13 requirements; audits; challenges.—

14 (1) This section may be cited as the "Florida Impact Fee  
15 Act."

16 (2) The Legislature finds that impact fees are an important  
17 source of revenue for a local government to use in funding the  
18 infrastructure necessitated by new growth. The Legislature  
19 further finds that impact fees are an outgrowth of the home rule  
20 power of a local government to provide certain services within  
21 its jurisdiction. Due to the growth of impact fee collections  
22 and local governments' reliance on impact fees, it is the intent  
23 of the Legislature to ensure that, when a county or municipality  
24 ~~adopts an impact fee by ordinance or a special district adopts~~  
25 an impact fee by resolution, the governing authority complies  
26 with this section.

27 (3) At a minimum, an impact fee adopted by ordinance of a  
28 county or municipality or by resolution of a special district  
29 must satisfy all of the following conditions:

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30 (a) The calculation of the impact fee must be based on the  
31 most recent and localized data.

32 (b) The local government must provide for accounting and  
33 reporting of impact fee collections and expenditures. If a local  
34 governmental entity imposes an impact fee to address its  
35 infrastructure needs, the entity must account for the revenues  
36 and expenditures of such impact fee in a separate accounting  
37 fund.

38 (c) Administrative charges for the collection of impact  
39 fees must be limited to actual costs.

40 (d) The local government must provide notice not less than  
41 90 days before the effective date of an ordinance or resolution  
42 imposing a new or increased impact fee. A county or municipality  
43 is not required to wait 90 days to decrease, suspend, or  
44 eliminate an impact fee. Unless the result is to reduce the  
45 total mitigation costs or impact fees imposed on an applicant,  
46 new or increased impact fees may not apply to current or pending  
47 permit applications submitted before the effective date of an  
48 ordinance or resolution imposing a new or increased impact fee.

49 (e) Collection of the impact fee may not be required to  
50 occur earlier than the date of issuance of the building permit  
51 for the property that is subject to the fee.

52 (f) The impact fee must be proportional and reasonably  
53 connected to, or have a rational nexus with, the need for  
54 additional capital facilities and the increased impact generated  
55 by the new residential or commercial construction.

56 (g) The impact fee must be proportional and reasonably  
57 connected to, or have a rational nexus with, the expenditures of  
58 the funds collected and the benefits accruing to the new

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residential or nonresidential construction.

(h) The local government must specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(4) Notwithstanding any charter provision, comprehensive plan policy, ordinance, or resolution, the local government must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.

(5) If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density ~~prepaid by~~ the credit

balance as of the date it was first established. This subsection shall operate prospectively and not retrospectively.

(6) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted

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88 to the Auditor General must include an affidavit signed by the  
89 chief financial officer of the local governmental entity or  
90 district school board stating that the local governmental entity  
91 or district school board has complied with this section.

92 (7) In any action challenging an impact fee or the  
93 government's failure to provide required dollar-for-dollar  
94 credits for the payment of impact fees as provided in s.  
95 163.3180(6)(h)2.b., the government has the burden of proving by  
96 a preponderance of the evidence that the imposition or amount of  
97 the fee or credit meets the requirements of state legal  
98 precedent and this section. The court may not use a deferential  
99 standard for the benefit of the government.

100 (8) Impact fee credits are assignable and transferable at  
101 any time after establishment from one development or parcel to  
102 any other that is within the same impact fee zone or impact fee  
103 district or that is within an adjoining impact fee zone or  
104 impact fee district within the same local government  
105 jurisdiction and receives benefits from the improvement or  
106 contribution that generated the credits.

107 (9)~~(8)~~ A county, municipality, or special district may  
108 provide an exception or waiver for an impact fee for the  
109 development or construction of housing that is affordable, as  
110 defined in s. 420.9071. If a county, municipality, or special  
111 district provides such an exception or waiver, it is not  
112 required to use any revenues to offset the impact.

113 (10)~~(9)~~ This section does not apply to water and sewer  
114 connection fees.

115 Section 2. This act shall take effect July 1, 2020.