

Persson & Cohen, P.A.
Attorneys and Counselors At Law

David P. Persson
Andrew H. Cohen
Kelly M. Fernandez*
Maggie D. Mooney-Portale*
R. David Jackson

Telephone (941) 306-4730
Facsimile (941) 306-4832

Email: kfernandez@swflgovlaw.com

* Board Certified City, County and Local Government Law

Reply to: *Lakewood Ranch*

MEMORANDUM

TO: MAYOR JOHN HOLIC
ED LAVALLEE, CITY MANAGER

FROM: KELLY M. FERNANDEZ, ASSISTANT CITY ATTORNEY

CC: DAVID P. PERSSON, CITY ATTORNEY

DATE: SEPTEMBER 30, 2015

RE: PARK AND ROAD IMPACT FEES

This memorandum is being provided in response to your request for additional information related to the collection and use of impact fees in the City. Below is a list of all impact fees assessed for new development within the City. All are collected on behalf of Sarasota County. The City does not charge any of its own impact fees.

- General Government Impact Fee (County-wide collection and use)
- Justice Facilities Impact Fee (County-wide collection and use)
- Library Impact Fee (County-wide collection and use)
- Park Impact Fee
- Road Impact Fee

Following are inquiries posed by Ed (somewhat rephrased and reorganized) along with my responses:

1. Determine what legislation, rule, or process specifies the decision making authority for the use of road and park impact fees (who wrote these rules, who approved them, by what authority, when, and why).

In the late 1970s, Sarasota County and its municipalities became embroiled in a dispute over dual taxation. The cities claimed they were paying county taxes for a variety of undelivered services and in a judgment issued in 1980, the Circuit Court agreed in part. Shortly before the issuance of the judgment and as part of a settlement, the City of Venice and Sarasota County entered into Interlocal Agreements for the Park Impact Fee and Road Impact Fee.

The Interlocal Agreements are nearly identical. They, under the authority of Sarasota County Ordinance Nos. 89-97 and 89-99, designate the land within the City as the Facility Service District and the Venice City Council as the Facility Service District Advisory Committee. Ordinance 89-99 enacted Chapter 70, Article V - Park Impact Fee, of the Sarasota County Code of Ordinances and Ordinance 89-97 enacted Chapter 70, Article III - Road Impact Fee, of the Sarasota County Code. Both Articles have been amended over the years, but still remain in effect. The Interlocal Agreements establish a service charge "for the sole purpose of defraying expenses associated with the establishment, amendment and annual updates of the impact fee ordinance and for expenses associated with the certificate of occupancy and financial administration of the impact fee ordinance" which is to be allocated between the City and County (1% for City and 1.25% for County). Both the Interlocal Agreements and County Code also require funds collected within the Venice Facility Service District to be used within the Venice Facility Service District or an abutting Facility Service District if properly justified. All projects are to be scheduled and prioritized in accordance with the County Capital Improvements Program and annual budget.

2. Determine if the codified rules match the actual current practice being used by the City and the County.

Neither the Interlocal Agreements nor the County Code specify how the City is to request fund expenditures or what process the County must go through in considering projects for funding. The only requirement for fund expenditure is that the funds be spent within the Facility Service District (i.e. City) or an abutting District with proper justification. The County's funding decisions appear to be simply made as part of its overall capital improvement and budgeting process.

3. Determine if the process could be changed, and if yes, by what means (who, when, and how). Examine the benefits and liabilities of changing the current process.

Although the City Council is designated as the Facility Service District Advisory Committee, it does not appear to have been given much of a role in determining how accrued funds should be spent. The Interlocal Agreements can be amended to include, for instance, a defined process for the City to provide recommendations or requests for project funding to the County and the criteria by which the County will review such recommendations or requests. An amendment to the Interlocal Agreements can be made at any time and would not require changing the existing County Code to accomplish the foregoing. Alternatively, the City and County can informally agree to a process by which to accomplish the prioritization of project funding.

The City also has the ability to terminate the Interlocal Agreements. To do so the City Council must declare its intention to terminate at a public meeting stating with particularity the reasons therefor and then submit its "Declaration of Intention to Terminate" to the County. The County has 30 days from receipt to hold a public hearing with notice to the City and an opportunity to be heard. The County must then make a recommendation regarding termination and forward same back to the City Council. The City then holds a public hearing within 30 days. If it approves termination, the Interlocal Agreements will be terminated effective the next September 30th and the County will revise the County budget and Capital Improvements Program to reflect the reduction of funds. Should the City wish to implement its own impact fee as a replacement, the City would need to follow the requirements of Section 163.31801, Florida Statutes, including the conduct of studies to support the new fee.

A copy of the Interlocal Agreements and applicable County Code provisions are attached. Please note that a review of what impact, if any, termination of the Park Impact Fee Interlocal Agreement would have on the Interlocal Agreement between the City and County for parks and recreation service has not been made. I am available to answer any further questions if needed.