

**Council Discussion:**

**Mobility and Park Impact Fee Process and Procedures. For background, please see attached attorney memo dated December 5,2016.**

**Thank You. Rich Cautero**



**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  
Regina A. Kardash

\* Board Certified City, County and Local Government Law

Telephone (941) 306-4730  
Facsimile (941) 306-4832  
Email: kfernandez@swflgovlaw.com

Reply to: Lakewood Ranch

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

**DATE:** December 5, 2016  
**TO:** Ed Lavalley, City Manager  
**CC:** David P. Persson, City Attorney  
**FROM:** Kelly M. Fernandez, Assistant City Attorney  
**SUBJECT:** Impact Fee Implementation

---

The purpose of this memorandum is to provide information regarding the steps the City would need to take in order to implement and operate its own impact fee system for parks and/or mobility. Section 163.31801, Florida Statutes, is the only legislative guidance provided for the implementation of an impact fee. Based on it, the City would need to do the following in order to implement its own park and/or mobility impact fees:

1. *Formally terminate its participation in the County's impact fee program through the process identified in each applicable Interlocal Agreement.* This process requires both the City and the County to hold a public hearing. The County cannot prohibit the City from terminating its participation in the County's impact fee system. The termination would take effect "the next succeeding September 30<sup>th</sup>." The County as part of its public hearing would determine how remaining funds in the City of Venice Service District Funds are to be disbursed.
2. *Hire a consultant to complete an impact fee study.* The study would serve as the basis for the impact fee adopted by the City. The impact fee must be based on the most recent and

---

Lakewood Ranch  
6853 Energy Court  
Lakewood Ranch, Florida 34240

St. Petersburg  
111 Second Avenue NE, Suite 536  
St. Petersburg, Florida 33701

Venice  
217 Nassau Street S.  
Venice, Florida 34285

localized data and represent the proportionate share of the cost of the public facilities needed to serve new development.

3. *Adopt an Ordinance.* The Ordinance would set the impact fees and an “accounting and reporting” system for collections and expenditures. If an impact fee is imposed to address infrastructure needs, the City must account for those revenues and expenditures in a separate accounting fund. The Ordinance cannot be effective sooner than ninety (90) days after adoption.
4. *Conduct regular audits.* The audits of financial statements must be performed by a CPA, submitted to the Auditor General, and include an affidavit signed by the City’s CFO.

The benefits of the City establishing its own impact fee system include the following:

1. The City will have control of the impact fee rates.
2. The City will have control of the expenditure of collected funds.

Some of the downsides of the City utilizing its own impact fee system are as follows:

1. The City will have sole responsibility for defending any impact fees adopted. In any challenge, the City will have the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or law.
2. The City will have sole responsibility for ensuring the funds are properly collected, including the application of any exemptions or reductions, and that the funds are spent within the timeframe established by the Ordinance.
3. Methods for addressing County development that impacts the City and City development that impacts the County that are currently covered by the City’s participation in the County’s impact fee system will need to be developed.
4. It will take time for enough impact fee funds to accumulate to cover the cost of a project.