



Response to Legal Request

To: Lori Barnes, Deputy Development Services Director

From: Michael Golen, Interim City Attorney *M. Golen*

Copy: A. Jerome Fletcher II, City Manager
Jason Yarborough, Deputy City Manager
Juliana B. Bellia, Assistant City Manager
Alaina Ray, Development Services Director
Amy Dixon, Executive Assistant
Kaitlyn Griffin, Performance & Accountability Officer

Date: September 22, 2025

Regarding: Impact Fee Exemption for Government Use (2846)

You inquired whether Chapter 58, Article III of the Code of the City of North Port, Florida (the “Impact Fee Code”) can be amended to provide that property used for a governmental use is (either fully or partially) exempt from impact fees and that, if the property ceases to be used for such use, the impact fees become due. This memo addresses the legal aspects of your questions.

I. SUMMARY

Yes, the City has the authority to fully or partially exempt governmental property from impact fees under its home rule authority. If the properties are made exempt, the City cannot make up for lost revenues by increasing the impact fees paid by other properties, as doing so would violate the proportionality requirement of the dual rational nexus test. The City can subsequently make the applicable impact fees due if the property ceases to be used for a governmental use.

Procedurally, an exemption of governmental property would be effectuated by amending City Code Section 58-101 to include a definition of “governmental property,” and by including governmental property in the list of exempted property types and uses set forth in City Code Section 58-105. Ideally, the amendment should also describe the public purpose advanced by the exemption and specify that the impact fees imposed against non-exempt properties are not being increased to subsidize the cost of the exemption.

II. BACKGROUND

Impact fees are a type of regulatory fee that may be imposed in the exercise of a sovereign function, as part of a local government's home rule powers.¹ The Florida Legislature has adopted the Florida Impact Fee Act, Florida Statutes Section 163.31801 (the "Act"), to regulate how local governments may impose impact fees. The Act does not speak to impact fee exemptions for property used for a governmental use.

Impact fees are an exercise of home rule authority,² subject to compliance with various procedural and substantive requirements set forth in the Act.³ The Act does not preempt the home rule authority that serves as the basis for impact fees. Accordingly, in adopting an exemption to an impact fee which is not mandated by state law,⁴ a local government is acting under its home rule authority.

III. ANALYSIS

When acting under its home rule authority, the City has a broad range of power.⁵ It can take any action that (i) serves a municipal purpose; (ii) is not prohibited by a superior law (such as a statute); and (iii) is not arbitrary or unreasonable.⁶ As there is no law prohibiting a local government from adopting an impact fee exemption, such exemption must serve a municipal purpose and must not be arbitrary or unreasonable.

An argument could be made that properties used for governmental purposes serve a broader public interest and that use supports an argument that exempting them from impact fees is consistent with a municipal purpose. This similarly supports the argument that such exemption is not arbitrary or unreasonable. Further, this supports making impact fees due when the property no longer qualifies for the exemption, as the property usage would no longer serve the stated public interests.

Several other local government jurisdictions have adopted governmental use exemptions for impact fees, many of which also provide that the exemption ceases if the governmental use ceases. For example:

- City of Safety Harbor, code of ordinances section 259.05. "The following shall be exempted from payment of the Impact Fees adopted in this Ordinance . . . Governmental Use. However, any Impact Fee exemption issued for a Governmental Use shall expire if an alteration causes the Building or development to no longer be for Governmental Use."
- City of Newberry, code of ordinances section 87-22. "[T]he following shall be exempted from the payment of impact fees imposed pursuant to this chapter . . . The construction of any building on

¹ See page 13 of the Florida Legislature's Office of Economic and Demographic Research's Local Government Financial Information Handbook.

² See, e.g., *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611 (Fla. 4th DCA 1983).

³ The Act provides that "[t]he Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction . . . it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section."

⁴ For example, impact fee exemption is mandated for public schools by section 1013.371, Florida Statutes, and for charter schools by section 1002.33(1), Florida Statutes. Such mandatory exemptions are recognized by Sec. 58-105(4) and (5) of the City Impact Fee Code, respectively.

⁵ See Article VIII, Section 2(b) of the Florida Constitution.

⁶ *Classy Cycles, Inc. v. Pan. City Beach*, 301 So. 3d 1046, 1050 (Fla. 1st DCA 2019).

government property. However, any impact fee exemption issued for government property shall expire if the property ceases to meet the definition of government property[.]”

- Osceola County, code of ordinances section 24-6. “[T]he following development shall be exempted from payment of impact fees . . . Government buildings or facilities.”
- Santa Rosa County, code of ordinances section 24-10. “[T]he following shall be exempted from the payment of impact fees imposed pursuant to this chapter . . . Government property. However, any impact fee exemption issued for government property shall expire if the property ceases to meet the definition of government property[.]”

IV. DUAL RATIONAL NEXUS TEST

While a local government may exempt property from impact fees, it must do so in a way that does not cause the charged impact fees to violate the dual rational nexus test. This test requires that “the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision.”⁷

As applied to exemptions, this test requires that charged impact fees are proportionate to the benefit provided to the property subject to the fee.⁸ Essentially, properties exempt from paying an impact fee must still be included in the calculations used to set impact fees, so that properties that are not exempt do not pay more to subsidize the exempt property.

⁷ *Bd. of Cty. Comm'rs v. Home Builders Ass'n of W. Fla., Inc.*, 325 So. 3d 981, 984-85 (Fla. 1st DCA 2021).

⁸ For example, a court would overturn an impact fee that is “clearly unfair and inequitable” or that would lead to a result that “defies logic.” *Bd. of Cty. Comm'rs v. Home Builders Ass'n of W. Fla., Inc.*, 325 So. 3d 981, 984-85 (Fla. 1st DCA 2021). Subsidizing the cost of (or revenue lost through) an impact fee exemption by increasing the amount paid by non-exempt properties is arguably unfair and violates the proportionate share requirement for impact fee imposition.