

City of South Daytona
Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



Memorandum

To: James L. Gillis Jr., City Manager
From: Becky Witte, Deputy City Clerk
Date: July 18, 2024
Re: Council Consideration of an Interlocal Agreement with Volusia County for the collection and distribution of Transportation Impact Fees.

Governor DeSantis signed House Bill 479, Alternative Mobility Funding Systems and Impact Fees, on June 25, 2024. The new law takes effect on October 1, 2024. The bill provides that if a County and/or municipality charge developers of a new development or redevelopment a fee for transportation capacity impacts, the County and/or municipality must, by October 1, 2025, create and execute an interlocal agreement to coordinate the mitigation of transportation capacity impacts and establish a process to collect and distribute the collected revenue.

The bill does not eliminate County transportation impact fees; however, it does encourage coordination between Counties and Municipalities regarding transportation impacts. If there is no interlocal agreement, the developer receives a ten percent reduction in the impact fees and proportionate fare share agreements. In addition, the entity that issues the building permit must collect the transportation impact fees and distribute the proceeds to the relevant county or municipality within 60 days of payment receipt. The above requirements do not apply to counties or municipalities that enter into an interlocal agreement by October 1, 2024.

Volusia County's thoroughfare road impact fees are only based on County roads and State arterial roads within an impact fee zone. Transportation concurrency contributions and proportionate fair share agreements for developments within municipalities still generate thoroughfare road impact fee credits for qualifying contributions. The attached interlocal agreement secures the status quo existing system that exists between Volusia County and municipalities regarding the calculation and collection of county-wide thoroughfare road impact fees. It also confirms that the preferred option for developers to pay impact fees is directly to the County, rather than being collected by a municipality and remitted to the County.

In order to keep the same process of collecting impact fees, staff recommends the City Council approve the attached Interlocal Agreement with Volusia County. If approved, the agreement will commence on September 30, 2024, and continue until terminated by either party.

INTERLOCAL AGREEMENT
REGARDING TRANSPORTATION IMPACT COORDINATION
BETWEEN THE COUNTY OF VOLUSIA (“COUNTY”)
AND
 (“CITY”)

THIS INTERLOCAL AGREEMENT REGARDING TRANSPORTATION IMPACT COORDINATION (hereinafter “Agreement”) is made and entered into this ____ day of _____, 2024, by and between the City of South Daytona (hereinafter referred to as the “City”) and the County of Volusia (hereinafter referred to as the “County”) (Individually, “Party” and collectively, “Parties.”).

WITNESSETH

WHEREAS Volusia County established a county-wide transportation thoroughfare road impact fee pursuant to its home rule authority, establishing common law regarding the creation and imposition of impact fees, and section 163.31801, Fla. Stat.; and

WHEREAS, the county-wide thoroughfare road system consists of all state roadways and any roadway that designated and shown on the Thoroughfare Road Map (Figure 2-1) contained in the Transportation Element of the Comprehensive Plan, connects municipalities and regions of the County and is an important component for the County and the Cities; and

WHEREAS, the County and Cities have coordinated on the imposition and collection of thoroughfare road impact fees; and

WHEREAS, currently Volusia County collects the thoroughfare road impact fees for developments in municipal areas that impact the County thoroughfare road system; and

WHEREAS, Section 70-75 (b) of the Code of Ordinances, County of Volusia, requires that no county or municipal certificate of occupancy, local business tax receipt, or use permit, or any activity requiring payment of an impact fee shall be issued unless and until the thoroughfare road impact fee (“impact fee”) has been paid;

WHEREAS, CS/HB 479 (2024) creates a new paragraph j in section 163.3180(5), Fla. Stat., that require the entity issuing the building permit to collect the impact fees; and

WHEREAS, new subparagraph 163.3180(5)(j)(4) provides that the new paragraph j does not apply to a county or municipality that has entered into an existing interlocal agreement as of October 1, 2024, to coordinate the mitigation of transportation impacts; and

WHEREAS, the purpose of this interlocal agreement is to continue the existing system of the collection and enforcement of county wide transportation impact fees as well as to not modify the existing system for transportation concurrency for County thoroughfare roads;

SECTION 1. The above recitals are hereby incorporated in this Agreement as adopted findings of fact and intent.

SECTION 2. IMPOSITION AND COLLECTION OF THOROUGHFARE ROAD IMPACT FEES

- a. Pursuant to section 163.3180(5)(j)(4), Fla. Stat., the County thoroughfare road impact fees are imposed County wide, including in the incorporated areas of the City, as provided in Chapter 70, Article III, of the Code of Ordinances, County of Volusia.
- b. Pursuant to section 70-76(a) of the Code of Ordinance, County of Volusia, the person applying for the issuance of a building permit shall make an application, verified by City staff, to the County for an impact fee statement. The County shall issue an impact fee statement to the applicant for a building permit. Such impact fee statement sets forth the amount of the impact fee due.
- c. County shall provide the City with appropriate contact information for personnel who will administrate the collection of impact fees.
- d. City and County agree that payment and collection of impact fees shall:

be in the same manner as provided in Section 70-76 of the Code of Ordinances, County of Volusia. Fee payers shall pay the thoroughfare road impact fees to the County of Volusia. Pursuant to Section 70-77 of the Code of Ordinances, County of Volusia, the County shall collect and retain the actual costs of administering the impact fee program, which is in addition to the impact fee; or

be collected by the City, as the entity issuing building permits, prior to the issuance of a certificate of occupancy, or the occupancy of the building. The City retains their portion of the actual costs of administering the impact fee program, which is in addition to the impact fee. Thoroughfare Road Impact Fees collected by the City shall be transferred to the County every month on the 15th of each month together with documentation on that each building or structure has paid the required impact fee.

- e. County shall use the collected Impact Fees in the same manner as provided in Sections 70-75, 70-76, and 70-77 of the Code of Ordinances, County of Volusia.

SECTION 3. NONPAYMENT OF IMPACT FEES

- a. County and City agree that in the event of non-payment of impact fees by the fee payer the City shall not issue a certificate of occupancy or approve occupancy of the building for which impact fees are due.
- b. If the fee payer has not paid the impact fees, the County may use the process provided in section 70-76 for collection of the impact fee.

SECTION 4. REFUND

- a. Nothing in this agreement alters the right of a fee payer to request refunds pursuant to section 70-78 of the Code of Ordinances, County of Volusia.

SECTION 5. TRANSPORTATION CONCURRENCY AND PROPORTIONATE FAIR SHARE; IMPACT FEE CREDITS

- a. Nothing in this agreement modifies, waives, or alters the method for transportation concurrency calculation or imposition or modifies the calculation, methodology, or imposition of proportionate share agreements pursuant to Chapter 70, Article I of the Code of Ordinances, County of Volusia or section 163.3180(5), Fla. Stat.
- b. Impact fee credits generated from transportation concurrency contributions, from proportionate fair share agreements pursuant to Chapter 70, Article I and Section 163.3180(5), or from right-of-way and for completed and accepted non-site related improvements may be used pursuant to section 70-75 and 70-79, of the Code of Ordinances, County of Volusia.
- c. Impact fee credits may be transferred pursuant to section 70-75(c)(3)(e) of the Code of Ordinances, County of Volusia.

SECTION 6. ADMINISTRATIVE REVIEW; INDEPENDENT CALCULATION

- a. Nothing in this agreement modifies or prevents the right of any fee payer to administrative review or hearing of any decisions regarding impact fees under Section 70-81 and 70-82 of the Code of Ordinances, County of Volusia.
- b. Nothing in this agreement modifies or prevents the right of any fee payer to determine their thoroughfare road impact by providing independent traffic documentation pursuant to the provisions of Section 70-75(c)(1) of the Code of Ordinances, County of Volusia.

SECTION 7. RIGHT-OF-WAY USE PERMITS; RIGHT-OF-WAY PERMITS. Nothing in this agreement modifies, waives, alters, or transfers County jurisdiction over the County Road System or City jurisdiction over the Municipal Road System or the ability to issue right-of-way permits or use permits for improvements to roads.

SECTION 8. TERM AND EFFECTIVE DATE. The Term of this Agreement shall commence on September 30, 2024 when filed with the Clerk of the Court for Volusia County Circuit Court, in accordance with Section 163.01(11), Fla. Stat., and shall continue until terminated by either party.

SECTION 9. TERMINATION. The City or County may terminate this Agreement at any time upon providing 90 days written notice of termination to the other Party.

SECTION 10. DISPUTE RESOLUTION.

- a. The City and County agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either Party may initiate the dispute resolution process by providing written notice to the other

party. Initiation of the dispute resolution process shall operate as a state of the action which is the subject of the dispute.

- b. Notwithstanding the foregoing, in the event that either party determines in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon filing any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.
- c. Within ten (10) days of the abatement order, the allegedly aggrieved Party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all governmental bodies involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict.
- d. If discussions between the Parties at the conflict resolution meeting fail to resolve the dispute, within forty (40) days of the receipt of the notice described in subparagraph "a", above, the Parties shall conduct mediation in the presence of a neutral third party mediator. If the Parties are unable to agree upon a mediator, the County shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Volusia County, Florida. The mediation contemplated by this section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues fostering joint problem-solving and exploring settlement alternatives.
- e. If the parties are unable to reach a mediated settlement, within fifty (50) days of receipt of the initial notice of conflict, the Parties shall hold a joint intergovernmental meeting. If the joint intergovernmental meeting does not successfully resolve the issues identified in the notice of conflict, the entities participating in the dispute resolution procedures described herein may avail themselves of any otherwise available rights, including the suspension of abatement of existing actions.
- f. The Parties agree this dispute resolution procedure is intended to satisfy the requirements of Sections 163.01(5)(p) and Chapter 163, Fla. Stat.

SECTION 11. NOTICE. All notices, consents, approvals, waivers, and elections that either Party requests or gives under this Amended Agreement shall be in writing and shall be provided by certified mail, return receipt requested, or by hand delivery for which a receipt is obtained. Notices shall be mailed or delivered to the addresses as set forth below or as either Party may otherwise designate in writing.

If to the County: County of Volusia
Attn: County Manager
Copy to: County Attorney
123 West Indiana Avenue
DeLand, Florida 32720

If to the City: City of South Daytona
Attn: City Manager
Copy to: City Attorney
1672 S. Ridgewood Avenue
South Daytona, Florida 32119

SECTION 12. SOLE BENEFIT. This Agreement is solely for the benefit of the City and County, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement, either expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity other than the Parties any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties and their respective representatives, successors, and assigns.

SECTION 13. AUTHORITY. The City and County each represent and warrant to the other its respective authority to enter into this Agreement and acknowledge the validity and enforceability of this Agreement. The City and County hereby represent, warrant, and covenant this Agreement constitutes a legal, valid, and binding contract enforceable by the Parties in accordance with its terms, and that the enforceability hereof is not subject to any impairment by the applicability of any public policy or police powers.

SECTION 14. ENFORCEMENT. This Agreement shall be enforceable by the Parties hereto by whatever remedies are available in law or equity, including but not limited to injunctive relief and specific performance. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed as a waiver (or continuing waiver) of such terms covenants, or conditions; nor shall any waiver or relinquishment of any right or power hereunder be deemed to be a waiver or relinquishment of such right or power at any other time.

SECTION 15. DEFENSE. If this Agreement or any portion hereof is challenged by any judicial, administrative, or appellate proceeding (each Party hereby agreeing with the other not to initiate or acquiesce to such challenge or not to appeal any decision invalidating any portion of this Agreement), the Parties collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through to a final judicial determination, unless both Parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating any portion of this Agreement.

SECTION 16. AMENDMENTS. Amendments to this Agreement may be offered by either Party at any time. Proposed amendments shall be in writing and must be approved by a majority of the governing bodies of each Party. No amendment shall be effective until approved by the governing bodies of the City and the County.

SECTION 17. NO WAIVER OF SOVEREIGN IMMUNITY. Both the City and County expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Fla. Stat. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County or City for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City or County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the resolution by which each party approved and adopted this Agreement.

ATTEST:

COUNTY OF VOLUSIA

George Recktenwald
County Manager

Jeffrey S. Brower
County Chair

Approved by:

County Attorney's Office

ATTEST:

CITY

James L. Gillis, Jr.
City Manager

William C. Hall
Mayor

Approved by:

Wade C. Vose
City Attorney