



To: Suramy Cabrera, Development Services Director

From: Naomi Levi Garcia, Assistant City Attorney for the City of Coral Gables

Approved: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MRSR*

RE: Legal Opinion Regarding Impact Fee Administration

Date: January 20, 2021

You asked whether the City can continue to collect impact fees prior to the issuance of a building permit in light of Section 163.31801 (3)(e), Florida Statutes, which states “collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.”

The short answer is yes, as long as the City does not require the impact fee to be paid prior to the date the permit is issued.

Chapter 2, Article VII, Section 2-2190, Coral Gables City Code, entitled “Administration of impact fees” states, “impact fees calculated and imposed pursuant to this article shall be collected by the collecting agency prior to issuance of a building permit.” The phrase “prior to” in Section 2-2190, can be interpreted consistent with state statute to mean prior to in time but not in date. Applying this interpretation, there is no conflict between Section 2-2190 and §163.31801 (3)(e), Florida Statutes.

There is a long line of cases that hold that a conflict between a local ordinance and a state statute arises when the local ordinance cannot coexist with the state statute. *See City of Hollywood*, 934 So.2d at 1246; *see also State ex rel. Dade County v. Brautigam*, 224 So.2d 688, 692 (Fla.1969) (explaining that “inconsistent” as used in article VIII, section 6(f) of the Florida Constitution “means contradictory in the sense of legislative provisions which cannot coexist”). Stated otherwise, “[t]he test for conflict is whether ‘in order to comply with one provision, a violation of the other is required.’” *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So.2d 637, 649 (Fla. 2d DCA 2007); *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 315 (Fla. 2008).

In the present matter, both the local and state requirements can coexist, and compliance with one does not require violation of the other. Therefore, the City can require the payment of impact fees

on the same date as the issuance of a permit, and payment may be construed as a permissible prerequisite to permit issuance.

I would also like to add that there is nothing to prevent a developer from voluntarily paying an impact fee prior to the date of issuance of a building permit, so long as it is not mandated.

This opinion is issued pursuant to Art. IV Section 2-252(e)(1) and (8) of the Coral Gables City Code.

Paulk, Enga

From: Ramos, Miriam
Sent: Wednesday, January 20, 2021 2:24 PM
To: Paulk, Enga
Cc: Levi Garcia, Naomi
Subject: FW: CAO Impact fee administration

Enga, please publish.

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

Board Certified by the Florida Bar in City, County, and Local Government Law

City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305)460-5084 direct dial



Public Records: This e-mail is from the City of Coral Gables – City Attorney’s Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you have received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose to anyone else. The State of Florida has a broad public records law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public upon request.

Confidentiality: The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be prohibited.

From: Levi Garcia, Naomi <nlevi-garcia@coralgables.com>
Sent: Wednesday, January 20, 2021 1:58 PM
To: Cabrera, Suramy <scabrera@coralgables.com>
Cc: Ramos, Miriam <mramos@coralgables.com>
Subject: CAO Impact fee administration

Suramy,

You asked whether the City can continue to collect impact fees prior to the issuance of a building permit in light of Section 163.31801 (3)(e), Florida Statutes, which states “collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.”

The short answer is yes, as long as the City does not require the impact fee to be paid prior to the date the permit is issued.

Chapter 2, Article VII, Section 2-2190, Coral Gables City Code, entitled “Administration of impact fees” states, “impact fees calculated and imposed pursuant to this article shall be collected by the collecting agency prior to issuance of a building permit.” The phrase “prior to” in Section 2-2190, can be interpreted consistent with state statute to mean prior to in time but not in date. Applying this interpretation, there is no conflict between Section 2-2190 and §163.31801 (3)(e), Florida Statutes.

There is a long line of cases that hold that a conflict between a local ordinance and a state statute arises when the local ordinance cannot coexist with the state statute. *See City of Hollywood*, 934 So.2d at 1246; *see also State ex rel. Dade County v. Brautigam*, 224 So.2d 688, 692 (Fla.1969) (explaining that “inconsistent” as used in article VIII, section 6(f) of the Florida Constitution “means contradictory in the sense of legislative provisions which cannot coexist”). Stated otherwise, “[t]he test for conflict is whether ‘in order to comply with one provision, a violation of the other is required.’” *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So.2d 637, 649 (Fla. 2d DCA 2007); *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 315 (Fla. 2008).

In the present matter, both the local and state requirements can coexist, and compliance with one does not require violation of the other. Therefore, the City can require the payment of impact fees on the same date as the issuance of a permit, and payment may be construed as a permissible prerequisite to permit issuance.

I would also like to add that there is nothing to prevent a developer from voluntarily paying an impact fee prior to the date of issuance of a building permit, so long as it is not mandated.

This opinion is issued pursuant to Art.IV Section 2-252(e)(1) and (8) of the Coral Gables City Code.

Please do not hesitate to contact me with any questions.

Best,

Naomi Levi Garcia, Esq.

Assistant City Attorney
Intergovernmental Affairs Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134
Office: 305-460-5248
Email: nlevi-garcia@coralgables.com