Impact Fees Increase

Number: AGO 2026-01

The Honorable Richard Gentry
Unit 108
275 South Charles Richard Beall Boulevard
DeBary, Florida 32713

Dear Representative Gentry:

This office received your letter, dated December 17, 2025, requesting a legal opinion on a question of Florida law.[1] You ask substantially the following question: whether Nassau County's 17% population increase over the previous five years qualifies as "extraordinary circumstances" under section 163.31801, Florida Statutes, to authorize the assessment of impact fees in excess of the statutory cap.

In short, my answer to your question is no. The steady, albeit heightened, increase in population of 17% over the previous five years does not qualify as "extraordinary circumstances" under the exception found in section 163.31801 for exceeding the statutory cap on impact fees.

Analysis

Impact fees are imposed by local governments to fund infrastructure needed to expand local services to meet the demands of population growth caused by development.[2] Section 163.31801(6), Florida Statutes, provides certain limitations on impact fee increases proposed by governing authorities. These restrictions include, among other things, that "[a]n impact fee increase may not exceed 50 percent of the current impact fee rate."[3] And any increase may not occur "more than once every 4 years."[4] There is an exception, however, to the 50 percent statutory cap.

Section 163.31801(6)(g), Florida Statutes, authorizes increases to impact fees above 50 percent provided certain procedural requirements are met. One of these requirements includes providing a "demonstrated-need study."[5] The study shall "expressly demonstrate[] the *extraordinary circumstances* necessitating the need to exceed" the statutory cap.[6] Yet "extraordinary circumstances" is undefined within the statute. We begin, therefore, with the plain and ordinary meaning of the text.[7]

We can start and finish that determination with the dictionary. Black's Law Dictionary defines "extraordinary circumstances" as "[a] highly unusual set of facts that are not commonly associated with a particular thing or event."[8] This is a commonsense definition and consistent with how the phrase is defined in other Florida statutes.[9]

Applying that definition of extraordinary circumstances to the question presented here, we do not find that a 17% population increase over the previous five years—approximately 3.4% annually—qualifies as a "highly unusual set of facts" that establishes a need for an increase of impact fees in excess of the 50% permitted in section 163.31801(6)(g). Florida has experienced considerable statewide population growth over the last several years; a 3.4% year-over-year growth rate in one jurisdiction cannot, therefore, be fairly construed as "extraordinary."[10] Yes, Nassau County's population increases over a five-year period are higher than those in *some* other Florida counties. But Nassau County's population increases over that period are lower than other Florida counties—counties that have not sought to levy extraordinary impact fee increases.[11] These observations undercut the existence of a set of facts that would justify a departure from the statutorily allotted 50% increases.

Remember also that Section 163.31801(6), Florida Statutes, already permits local governments to raise rates due to new development and growth. Indeed, impact fees exist for that very purpose—to aid local communities as they

adjust to "new growth."[12] Local governing authorities accordingly may raise impact fees *up to* 50% every four years without any special justification.[13] The sole exception to this cap is a showing of extraordinary circumstances. But those extraordinary circumstances cannot be the type of thing—steady population growth—that the statute already treats as unextraordinary. Put differently, the same growth that justifies limited, regimented impact fee increases in the statute can't also justify extraordinary increases that jettison those strictures associated with those limited, regimented impact fee increases. To do so would fatally frustrate the statute's 50% cap[14] and prohibition on increasing fees "more than once every four years."[15] In this instance, if Nassau County's justification to invoke "extraordinary circumstances" and increase the impact fees was correct, the statutory exception would swallow the statutory rule. Such a conclusion would be quite the workaround for local governments, but it would also violate multiple statutory canons.[16]

Conclusion

A 17% population increase over the previous five years does not qualify as "extraordinary circumstances" under the exception in section 163.31801 to authorize the assessment of impact fees in excess of the 50% statutory cap. Therefore, Nassau County may not increase its impact fees above 50% of the statutory cap under these circumstances. We acknowledge that population growth can create strain on local governments' fiscal responsibilities. But passing excessive costs on to home builders—and in turn homeowners—is something that, according to the Legislature, should occur only in "extraordinary circumstances." Impact fees are not taxes. We caution that the implementation of the increases by Nassau County of almost 100% of the current rate[17] without the requisite justification appears to be a tax disguised as an impact fee.[18]

Sincerely,

James Uthmeier
Attorney General

[1] *See* Letter from Richard Gentry, Fla. House of Representatives, to James Uthmeier, Att'y Gen. of Fla., (Dec. 17, 2025) (on file with the Office of the Florida Attorney General).

[2] *See* § 163.31801(2), Fla. Stat.

[3] § 163.31801(6)(d), Fla. Stat.

[4] § 163.31801(6)(e), Fla. Stat.

[5] §163.31801(6)(g)(1)(a), Fla. Stat.

[6] *Id*. (emphasis added).

[7] *See Dianderas v. Fla. Birth Related Neurological*, 973 So. 2d 523, 527 (Fla. 5th DCA 2007) ("When a term is undefined by statute, '[o]ne of the most fundamental tenets of statutory construction' requires that we give a statutory term 'its plain and ordinary meaning.'" (quoting *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992))).

[8] *Circumstance*, Black's Law Dictionary (12th ed. 2024).

[9] *See, e.g.*, § 213.24(3)(a), Fla. Stat. (relating to the authority to waive fees assessed against a taxpayer due to "extraordinary circumstances," which is defined as "events beyond the control of the taxpayer including, but not limited to, the taxpayer's death; acts of war or terrorism; natural disaster, fire, or other casualty…").

[10] *See* Neilsberg Research, *Florida Population by Year*, neilsberg.com/insights/florida-population-by-year/ (last visited, December 8, 2025) (noting that Florida's population has increased by 1.78 million between 2020 and 2024).

[11] *See, e.g.*, The Recorder, *St. Johns County adds, makes changes to impact fees* (December 11, 2025) pontevedrarecorder.com/stories/untitiled,158118 (reporting that St. Johns County limited their impact fee increase in 2025 to the 50% statutory maximum—despite being one of the fastest growing counties in the State).

[12] *See* § 163.31801(2), Fla. Stat.

[13] *See* §163.31801(6)(a)–(f), Fla. Stat.

[14] *See* §163.31801(6)(d), Fla. Stat.

[15] *See* §163.31801(6)(e), Fla. Stat.

[16] *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* (2012) § 24, at 167-69 ("Whole-Text Canon"); § 26, at 174-79 ("Surplusage Canon"); § 27, at 180-82 ("Harmonious-Reading Canon").

[17]TischlerBise, *Development Impact Fee Update* (November 25, 2025), nassaucountyfl.primegov.com/viewer/preview?id=0&type=8&uid=9c1113b2-d9b7-478e-b21f-02b5a40b4440.

[18] *Bd. of Cnty. Comm'rs, Santa Rosa Cnty. v. Home Builders Ass'n. of W. Fla., Inc.*, 325 So. 3d 981, 984–85 (Fla. 1st DCA 2021) (noting that the distinction between an unconstitutional tax and a valid impact fee hinges on the dual rational nexus test which requires demonstrating (1) that there is "a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated" by the new development and (2) that there is "a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to" the new development (quoting *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 611-12 (Fla. 4th DCA 1983))).