

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 9/15/2020 Consent Regular
 Workshop Public Hearing

Department: County Attorney's Office
Submitted By: County Attorney's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to: a) adopt a Resolution declaring that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with the City of Palm Beach Gardens prior to court proceedings; and b) direct staff to initiate litigation, as appropriate, to resolve the County's conflict with the City of Palm Beach Gardens over the City of Palm Beach Gardens' amendment # CPTA-20-04-000036 to its Comprehensive Plan.

Summary: On September 10, 2020, the City of Palm Beach Gardens (the "City") adopted comprehensive plan amendment # CPTA-20-04-000036 ("Amendment"). The City's Amendment seeks to further unlawfully implement and expand the City's Mobility Plan and Fee to the exclusion of County ordinances implementing traffic performance standards and road impact fees. Section 164.1041, Florida Statutes requires that the Board of County Commissioners find, by a three-fourths vote, that significant legal rights will be compromised if a court proceeding does not take place before the provisions of Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act, are complied with. Staff recommends that the Board of County Commissioners find, by a three-fourths vote, that significant legal rights will be impaired if the County is required to again complete the conflict resolution process prior to court proceedings and direct staff to initiate litigation, as appropriate, to resolve the County's conflict with the City over this Amendment. Countywide (KP)

Background and Policy Issues: On February 4, 2020, the Board of County Commissioners authorized the initiation of the conflict resolution procedures set forth in Chapter 164, Florida Statutes Florida, the Florida Governmental Conflict Resolution Act, to address the City's unlawful adoption of Ordinance 16, 2019; Ordinance 19, 2019; and Resolution 57, 2019, which unlawfully implemented the City's Mobility Fee and Plan within the Mobility Fee Assessment Area to the exclusion of County ordinances implementing traffic performance standards and road impact fees. The County and the City completed the requirements set forth in Chapter 164, Florida Statutes. (continued on Page 3)

- Attachments:** 1. Resolution 2020_
2. Palm Beach County's IPARC Formal Written Objection

Recommended by:  9/8/2020
 Department Director Date

Approved By:  9/14/2020
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenue	-0-	-0-	-0-	-0-	-0-
Program Income(County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match(County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
#ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes ___ No X
 Does this item include the use of federal funds? Yes ___ No X


Budget Account No:
 Fund Agency Organization Object

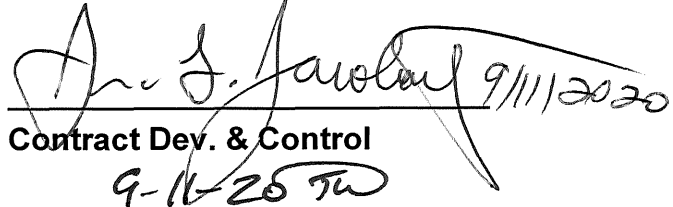
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 9/9/2020
 OFMB
 9/9/20

 9/11/2020
 Contract Dev. & Control
 9-11-20 TW

B. Legal Sufficiency


 Assistant County Attorney

C. Other Department Review

 Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Background and Policy Issues:

On June 2, 2020 – in the middle of the conflict resolution process – the County received notice of the City’s proposed amendment to its comprehensive plan # CPTA-20-04-000036 (“Amendment”), through the standard Intergovernmental Plan Amendment Review Committee (“IPARC”) coordination process. The City’s Amendment seeks to further unlawfully implement and expand the City’s Mobility Plan and Fee to the exclusion of County ordinances implementing traffic performance standards and road impact fees. The County issued a Notice of Intent to Object prior to the City’s July 16, 2020 vote to transmit the Amendment to the Florida Department of Economic Opportunity (“DEO”) and issued a Formal Objection through IPARC on July 21, 2020. An IPARC Fact Finding Panel Meeting was held on July 29, 2020, with the panel concluding that the conflict should be resolved “through the normal Department of Economic Opportunity review process as well as the continued resolution through the ongoing Chapter 164 process, as these amendments are related to the pending litigation resulting from the previous actions taken”.

On September 10, 2020, the City approved the second reading and adoption of the Amendment.

The City has no legal authority to unilaterally repeal County ordinances implementing the County’s traffic performance standards and road impact fees. At all relevant times, the County has consistently objected to these unlawful actions by the City. Despite the County’s repeated objections and numerous invitations to work collaboratively to develop a lawful mobility plan, the City has consistently reaffirmed its intent to take these unlawful actions.

Staff recommends that the Board of County Commissioners find, by a three-fourths vote, that significant legal rights will be impaired if the County is required to again complete the conflict resolution process prior to court proceedings and direct staff to initiate litigation, as appropriate, to resolve the County’s conflict with the City over this Amendment.

RESOLUTION NO. 2020 __

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING THAT SIGNIFICANT LEGAL RIGHTS WILL BE IMPAIRED IF PALM BEACH COUNTY IS REQUIRED TO COMPLETE INTERGOVERNMENTAL CONFLICT RESOLUTION PROCEDURES WITH THE CITY OF PALM BEACH GARDENS PRIOR TO COURT PROCEEDINGS AND DIRECTING STAFF TO INITIATE LITIGATION, AS APPROPRIATE, TO RESOLVE THE COUNTY'S CONFLICT WITH THE CITY OF PALM BEACH GARDENS OVER THE CITY'S AMENDMENT # CPTA-20-04-000036 TO ITS COMPREHENSIVE PLAN.

WHEREAS, Article 12 of the Palm Beach County (the "County") Unified Land Development Code contains ordinances relating to the County's traffic concurrency system, including level of service standards, and is applicable to all roads within the County that are not the responsibility of any municipality; and

WHEREAS, Article 13 of the County Unified Land Development Code contains ordinances relating to Palm Beach County impact fees, including a requirement that a municipality shall ensure that Palm Beach County impact fees are properly collected and remitted to Palm Beach County; and

WHEREAS, in September of 2019, the City of Palm Beach Gardens (the "City") adopted Ordinance 16, 2019, Ordinance 19, 2019, and Resolution 57, 2019, which approved a Mobility Plan and Mobility Fee Technical Report, terminated an interlocal agreement with the County regarding traffic concurrency procedures, and amended the City's impact fee schedule consistent with the Mobility Fee Technical Report; and

WHEREAS, because Ordinance 16, 2019; Ordinance 19, 2019; and Resolution 57, 2019 unlawfully implemented the City's Mobility Fee and Plan to the exclusion of the County's ordinances implementing traffic performance standards and road impact fees within the Mobility Fee Assessment Area, on February 4, 2020, the Board of County Commissioners authorized the commencement of intergovernmental conflict resolution procedures pursuant to Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act; and

WHEREAS, on March 4, 2020, County and City staff participated in a conflict assessment meeting, as required by Chapter 164, but were unable to reach a resolution; and

WHEREAS, on July 2, 2020, the Board of County Commissioners and City Council participated in a joint public meeting, as required by Chapter 164, but were unable to reach a resolution; and

WHEREAS, on August 18, 2020, the County and City participated in a mediation, as required by Chapter 164, which concluded in an impasse; and

WHEREAS, on June 2, 2020 – in the middle of the conflict resolution process – the County received notice of the City’s proposed amendment to its comprehensive plan # CPTA-20-04-000036 (the “Amendment”), through the standard Intergovernmental Plan Amendment Review Committee (“IPARC”) coordination process pursuant to Interlocal Agreement, R-93-802; and

WHEREAS, the Amendment will further unlawfully implement and expand the City’s Mobility Plan; and

WHEREAS, on June 22, 2020, the County issued a Notice of Intent to Object to the Amendment IPARC; and

WHEREAS, on July 16, 2020, the City Council voted to transmit the Amendment to the Florida Department of Economic Opportunity pursuant to the process for adoption of comprehensive plan amendments under Chapter 163, Florida Statutes; and

WHEREAS, On July 21, 2020, the County issued a Formal Objection through IPARC; and

WHEREAS, July 29, 2020, an IPARC Fact Finding Panel Meeting was held; and

WHEREAS, on July 29, 2020, the panel issued its Fact Finding Panel Opinion Letter, which concluded that the conflict should be resolved “through the normal Department of Economic Opportunity review process as well as the continued resolution through the ongoing Chapter 164 process, as these amendments are related to the pending litigation resulting from the previous actions taken”; and

WHEREAS, on September 10, 2020, the City Council approved the second reading and adoption of the Amendment; and

WHEREAS, the City has no legal authority to unilaterally repeal County ordinances implementing the County’s traffic performance standards and road impact fees; and

WHEREAS, the County’s significant legal rights will be compromised upon the City’s adoption of the unlawful Amendment; and

WHEREAS, the City has taken these unlawful actions even though the County has objected to the City’s unlawful actions and expressed its desire to work with the City to support efforts to provide multi-modal transportation network options for the mutual interest of both parties, and the County plans to hold a countywide mobility workshop to address opportunities for the future of transportation throughout the County to benefit all County citizens and visitors; and

WHEREAS, Section 164.1041, Florida Statutes, requires that the Board of County Commissioners find, by a three-fourths vote, that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act are complied with.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The recitals above are true and correct and form a part of this Resolution.
2. This Board finds that significant legal rights will be compromised if a court proceeding does not take place before the provisions of Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act, are complied with.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

District 1	Commissioner Hal R. Valeche	_____
District 2	Commissioner Gregg K. Weiss	_____
District 3	Commissioner Dave Kerner, Mayor	_____
District 4	Commissioner Robert S. Weinroth, Vice-Mayor	_____
District 5	Commissioner Mary Lou Berger	_____
District 6	Commissioner Melissa McKinlay	_____
District 7	Commissioner Mack Bernard	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2020.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

FORMAL WRITTEN OBJECTION

TO: Clearinghouse
Palm Beach Gardens

FROM: Palm Beach County

DATE: July 21, 2020

RE: Reference #: CPTA-20-04-000036

Palm Beach County hereby files a formal objection to the proposed Palm Beach Gardens' comprehensive plan amendment # CPTA-20-04-000036 for the following reasons:

1. The proposed amendments are directly related to an issue, the Palm Beach Gardens' local mobility plan and fee, which is the subject of a conflict resolution process initiated by the County pursuant to Chapter 164, F.S. Therefore, the proposed amendments are premature pending outcome of the conflict resolution process.
2. Palm Beach Gardens' Objective 2.1.1 of the City's Comprehensive Plan Transportation Element is proposed to be amended as follows:

Objective 2.1.1: To maintain adopted level of service (LOS) standards on the City's ~~traffic circulation~~ transportation system west of the Beeline Highway, including the Beeline Highway.

By amending this objective as such, all policies within this objective will only apply to the Beeline Highway and areas of the City to the west of the roadway. This would in effect remove the adopted LOS standard for roadways, including County facilities, for all areas of the City east of the Beeline Highway. The County believes the City has not consulted with the County in accordance with Palm Beach Gardens' Transportation Element Policy 2.1.1.14 (proposed to be amended to Policy 2.1.1.12):

Repeal of Palm Beach County transportation concurrency, proportionate fair-share and road impact fees will require consultation with Palm Beach County.

It is noted that new area wide roadway LOS standards and area wide quality of service (QOS) standards are included for areas of the City to the east of Beeline Highway in newly proposed Objective 2.1.2, but again these were not developed in consultation with Palm Beach County.

3. Pursuant to Section 163.3184(3)(b)3, F.S., the City's proposed amendment is inconsistent with several of the County's Comprehensive Plan policies including, but not limited to, Transportation Element policies 1.1-a, 1.1-b, 1.3-i, 1.12-b, 1.12-d, 1.13-a, 1.13-d, 1.13-e, and 1.13-f, and Capital Improvement Element Policy 1.6-e.3, as shown in Exhibit 1.
4. The proposed amendments are another illegal attempt by the City to repeal countywide transportation concurrency, proportionate fair-share and road impact fees. The County objects to any and all provisions which attempt to eliminate any of these important funding sources for the County transportation network. Our objection is based upon the fact that a municipality cannot unilaterally repeal these laws pursuant to the County's Charter. Traffic Performance Standards and Impact Fee regulations are applicable in every city, including the City of Palm Beach Gardens.

EXHIBIT 1 - PALM BEACH COUNTY COMPREHENSIVE PLAN

TRANSPORTATION ELEMENT POLICIES

Policy 1.1-a: Development Orders issued by the County and municipalities shall be consistent with the level of service standards of this Element and the Countywide Traffic Performance Standard Ordinance. Roadway capacity shall be provided to accommodate development-related impacts at the adopted Level of Service (LOS) standard, except where otherwise indicated in Objective 1.2 of this Element or in other Goals, Objectives, and Policies of the Palm Beach County Comprehensive Plan. The implementing ordinance may effect a partial exercise in municipalities by the authority established by Section 1.3(4) of the Palm Beach County Charter.

Policy 1.1-b: No development order shall be issued by the County or a municipality for any project that adds traffic to a thoroughfare network street or intersection as defined herein and in the Unified Land Development Code (ULDC) Traffic Performance Standard that causes a LOS in Test One or Test Two to deteriorate below adopted standards. Traffic shall be measured by application of Test One and Test Two as described below and set forth with greater specificity in the ULDC. Exceptions are limited to those Specific Exceptions as provided for in this Element.

1) Test One shall analyze the projected levels of service on the intersections and links of the Thoroughfare network as defined in the ULDC. The analysis shall consist of two components; Test One Part One – Intersection Analysis and Test One Part Two – Link Analysis.

a) Test One Part One shall utilize the peak season, peak hour turning movement volumes at Major Intersections as defined in the ULDC. The Intersections must satisfy the LOS D thresholds using the 1985 Highway Capacity Manual-Planning Methodology (also known as the Critical Movement Analysis, CMA). In addition to performing this analysis, subsequent analysis may be performed to show compliance using the most current Highway Capacity Manual Intersection Operational Analysis.

b) Test One Part Two shall utilize the peak season, peak hour, peak direction traffic volumes on links within or beyond the Radius of Development Influence (RDI) where the project has a significant impact as defined in the ULDC.

c) The total project traffic volumes on links shall not exceed the applicable LOS D peak hour, peak direction service volumes as identified in Table TE 1a of this Element. The applicable facility class for each link shall be determined on the basis of the number of traffic signals per mile anticipated by the County Engineer to be in place by the buildout time frame of the proposed project being evaluated. Additionally, for all links where the total traffic peak hour directional volumes exceed the applicable service volume in Table TE 1a and for all links where the uninterrupted flow service volume has been utilized, the Major Intersections on each end of the link shall meet LOS D Intersection Thresholds as identified in Table TE 1b.

d) If the link fails the analysis under 1), then a more detailed analysis using the HCM Arterial Analysis Operational methodology can be done provided the following conditions are met:

the Major Intersections at each end of the link meet the LOS D Intersection Thresholds in Table TE 1b, and

the buildout period is five years or fewer, and

the traffic signals projected to be in place on the link during the Buildout period of the Traffic Impact Study are less than or equal to 2 miles apart

the more detailed analysis is done and the link meets the LOS D Speed Thresholds in Table TE 1c, then the project passes Part Two of Test One.

the conditions to permit the more detailed analysis are not met or the link does not meet the LOS Speed Thresholds in Table TE 1c, then the project fails Part Two of Test One.

Test 2-Five Year Analysis: No project shall be approved for development by the County or a municipality unless it can be shown that the traffic impact of the proposed development meets the requirements of Test 2 as described in greater detail in the ULDC. A Test 2 analysis will address all traffic anticipated to be in place at the end of the fifth year of the Florida Department of Transportation Five-Year Transportation Improvement Program in effect at the time of traffic analysis submittal. LOS E, provided for in Tables 2a through 2c shall be employed in application of Test 2 as set forth in greater detail in the ULDC.

The level of Service D thresholds for Test One, Parts One and Two are shown in Tables TE-1a through TE-1c.

The Level of Service E thresholds for Test Two are shown in Tables TE-2a through TE-2c.

Policy 1.3-i: The County will maintain policies and programs which ensure that the overall transportation system meets the County's level of service criteria in order to provide viable alternatives to the Florida Intrastate Highway System & the Strategic Intermodal System, and to protect their interregional and intrastate functions.

Policy 1.12-b: New development shall be assessed an appropriate impact fee to help provide funding for roadway improvements to serve the development.

Policy 1.12-d: The Five Year Road Improvement Program shall be consistent with the 1990 Countywide Traffic Performance Standards Ordinance and serve as input to the Capital Improvement Element's Five Year Road Improvement Schedule.

Policy 1.13-a: The County shall utilize intergovernmental programs identified in the Intergovernmental Coordination Element, such as the Intergovernmental Plan Amendment Review Committee (IPARC), to implement the Goal, Objectives, and Policies of the County's Transportation Element.

Policy 1.13-d: To ensure the availability of adequate transportation facilities, the County's transportation system shall be coordinated with local comprehensive plans to reflect the demand created by anticipated development.

Policy 1.13-e: The Palm Beach County Planning Division and Engineering Department shall establish a coordinated review process that will ensure that the Palm Beach County Six Year Road Improvement Schedule is consistent with Goals, Objectives, and Policies of the Comprehensive Plan.

Policy 1.13-f: The County shall continue to work with jurisdictions in adjacent counties and municipalities within Palm Beach County to coordinate transportation related issues, such as 1) the locations and dimensions of thoroughfare rights-of-way and to address multi-jurisdictional traffic impacts to assure maintenance of acceptable Level of Service on the traffic circulation network, 2) the future transit needs and delivery services, and 3) the provisions and operations of non-vehicular modes as they relate to intercounty travel.

CAPITAL IMPROVEMENT ELEMENT POLICY

Policy 1.6-e.3: Fair-Share Road Impact Fees, pursuant to Ordinance 89-19, shall continue to be assessed to residential and non-residential development Countywide, for County roads.