



To: Jane Tompkins

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Refund Of An Impact Fee May Be Granted Only Where Impact Fee Has Been Previously Paid – A-Loft Hotels

Date: December 12, 2014

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I have reviewed Chapter 2, Article IX of the City Code, including the provisions you identified. I agree with the analysis you have provided. It is my opinion and interpretation, pursuant to section 2-201(e)(1) and (8) of the City Code, that a refund of an impact fee (such as a park impact fee) may be granted only where the impact fee has been previously paid, and part of that payment is being refunded. Section 2-106(a) of the City Code indicates that “[n]o refund of impact fees previously paid shall be provided for any decrease in the amount or type of development except as provided under section 2-2112(c) of this article.” (emphasis added).

In addition, section 2-2112(c) of the City Code -- the provision which permits a refund in the appropriate circumstances -- indicates in subsection (1) that “[t]he current owner of property on which an impact fee has been paid may apply for a refund of such fee if: (i) the city has failed to appropriate or spend the collected fees by the end of the calendar quarter immediately following six years after the date of payment of the impact fee; (ii) the building permit for which the impact fee has been paid has lapsed for noncommencement of construction; or (iii) the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due.” (emphasis added).

In reviewing these provisions, it is clear that section 2-2112(c)(1) allows a refund where an impact fee “has been paid” for “such fee” where “the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due.” This language is clear and express, and the plain meaning controls: Any refund must come from an impact fee that has been paid.

## Herbello, Stephanie

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**From:** Leen, Craig  
**Sent:** Friday, December 12, 2014 5:01 PM  
**To:** Herbello, Stephanie  
**Subject:** FW: A-loft Hotels -BI14033119

Please include in opinion folder.

**Craig E. Leen, City Attorney**  
*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Phone: (305) 460-5218  
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Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)

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**From:** Leen, Craig  
**Sent:** Friday, December 12, 2014 5:00 PM  
**To:** Tompkins, Jane  
**Cc:** Goizueta, Virginia; Thornton, Bridgette; Figueroa, Yaneris; Herbello, Stephanie; Parramore, Carol  
**Subject:** RE: A-loft Hotels -BI14033119

Jane,

I have reviewed Chapter 2, Article IX of the City Code, including the provisions you identified. I agree with the analysis you have provided. It is my opinion and interpretation, pursuant to section 2-201(e)(1) and (8) of the City Code, that a refund of an impact fee (such as a park impact fee) may be granted only where the impact fee has been previously paid, and part of that payment is being refunded. Section 2-106(a) of the City Code indicates that "[n]o refund of impact fees previously paid shall be provided for any decrease in the amount or type of development except as provided under section 2-2112(c) of this article." (emphasis added).

In addition, section 2-2112(c) of the City Code -- the provision which permits a refund in the appropriate circumstances -- indicates in subsection (1) that "[t]he current owner of property on which an impact fee has been paid may apply for a refund of such fee if: (i) the city has failed to appropriate or spend the collected fees by the end of the calendar quarter immediately following six years after the date of payment of the impact fee; (ii) the building permit for which the impact fee has been paid has lapsed for noncommencement of construction; or (iii) the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due." (emphasis added).

In reviewing these provisions, it is clear that section 2-2112(c)(1) allows a refund where an impact fee "has been paid" for "such fee" where "the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due." This language is clear and express, and the plain meaning controls: Any refund must come from an impact fee that has been paid.

Please let me know if you have any further questions.

**Craig E. Leen, City Attorney**  
*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
City of Coral Gables

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**From:** Tompkins, Jane  
**Sent:** Friday, December 12, 2014 3:21 PM  
**To:** Leen, Craig  
**Cc:** Goizueta, Virginia  
**Subject:** RE: A-loft Hotels -Bl14033119

Hi Craig;  
Municipal Code Chapter 2, Article IX "Impact Fees". More specifically Sec 2-2106 "Applicability" and 2-2112 "Administrative Petitions for Impact Fee determinations, refunds and credits".

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**From:** Leen, Craig  
**Sent:** Friday, December 12, 2014 10:17 AM  
**To:** Tompkins, Jane  
**Cc:** Goizueta, Virginia  
**Subject:** RE: A-loft Hotels -Bl14033119

Hi Jane. Please provide me the Code provision and I will have you my opinion/interpretation today.

**Craig E. Leen, City Attorney**  
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**From:** Tompkins, Jane  
**Sent:** Tuesday, December 09, 2014 1:37 PM  
**To:** Leen, Craig  
**Cc:** Goizueta, Virginia  
**Subject:** FW: A-loft Hotels -Bl14033119

Good morning, Craig;

Last week we discussed the issue of impact fees and when payment of a refund or credit was appropriate. Virginia has brought to my attention a request from A-Loft Hotel (please see below). As I understand it, an apartment complex was demolished recently on the property. Construction of the original apartment building pre-dates the adoption of the impact fee ordinance, so no fees were ever paid for that building. If another apartment complex were to be built today, a credit would be applied towards the park impact fee due for the new building as if a fee had been paid when the original building was constructed. However, a hotel is not charged for park impact fees so there is no fee to which a credit could be applied. Regardless, A-Loft has requested a reimbursement of the credit. I don't believe A-Loft is entitled to a reimbursement, as fees were never paid for that property. Is that your interpretation as well?

Thanks  
Jane

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**From:** Goizueta, Virginia  
**Sent:** Friday, December 05, 2014 2:01 PM  
**To:** Tompkins, Jane  
**Subject:** A-loft Hotels -Bl14033119

Good afternoon Jane,

The demolished structures previously located at 2524 Le Jeune Rd yield a park impact fee credit for 8 residential units. The proposed new structure, A-Loft Hotel, does not have a charge for a park impact fee because of its specific use.

The applicant would like to request a refund in the amount of \$ 31,448.00 for these impact fees?

*Virginia Goizueta*  
*Building Service Coordinator*  
*City of Coral Gables*  
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