

RESOLUTION 23-27

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA RELATING TO MUNICIPAL REGULATION; MAKING FACTUAL FINDINGS; ADOPTING TOWN POLICY REGARDING THE PREPARATION AND DISSEMINATION OF BUSINESS IMPACT ESTIMATE STATEMENTS PRIOR TO ADOPTION OF CERTAIN PROPOSED MUNICIPAL ORDINANCES; ADOPTING PROCEDURES, REQUIREMENTS AND EXEMPTIONS FOR THE PREPARATION AND DISSEMINATION OF BUSINESS IMPACT ESTIMATE STATEMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY, THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Town of Dundee, Florida ("Town") is a Florida municipal corporation endowed with home rule governmental, corporate and proprietary powers sufficient to enable it to conduct municipal government, perform municipal functions and render municipal services pursuant to Section 2(b) of Article VIII of the Florida Constitution of 1968 and the Municipal Home Rule Powers Act, codified at Chapter 166 of the Florida Statutes; and

WHEREAS, the procedures for enacting municipal ordinances in Florida are specified in the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes; and

WHEREAS, effective October 1, 2023, Section 6 of Chapter 2023-309, Laws of Florida, provides that "[b]efore the enactment of a proposed ordinance, the governing body of a municipality shall prepare or cause to be prepared a business impact estimate" to be posted on the municipality's website that includes, in sum: (a) a summary of the proposed ordinance, including a statement of the public purpose to be served by the proposed ordinance; (b) an estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the municipality, including an estimate of direct compliance costs, identification of new charges and fees, and an estimate of regulatory costs including an estimate of revenues from new charges and fees; (c) a good faith estimate of the number of businesses likely to be impacted by the ordinance; and (d) any additional information the governing body determines to be useful; and

WHEREAS, Section 6 of Chapter 2023-309, Laws of Florida, further provides that a municipality shall not be required to procure an accountant or other financial consultant in order to prepare a business impact estimate; and

WHEREAS, Section 6 of Chapter 2023-309, Laws of Florida, further provides that a business impact estimate is not required to be generated for: (a) ordinances required for compliance with federal or state law or regulation; (b) ordinances relating to the issuance of or refinancing of debt; (c) ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget; (d) ordinances required to implement a contract or an agreement including federal, state,

local, and private grants or other financial assistance; (e) emergency ordinances; (f) ordinances relating to procurement; (g) ordinances relating to growth policy, county and municipal planning and land development regulation including zoning, development orders, development agreements and development permits, enacted to implement Part II of Chapter 163, Florida Statutes, including the Growth Policy Act, the Community Planning Act, the Agricultural Land Acknowledgment Act, the Florida Impact Fee Act, the Florida Local Government Development Agreement Act, and the Manufacturing Competitiveness Act; (h) ordinances enacted to implement the Uniform Community Development District Act of 1980, Sections 190.005 and 190.046, Florida Statutes; and (i) ordinances enacted to implement the Florida Building Code, Section 553.73, Florida Statutes, and the Florida Fire Prevention Code, Section 633.202, Florida Statutes; and

WHEREAS, also effective October 1, 2023, Section 1 of Chapter 2023-309, Laws of Florida provides that if a civil action is filed against a local government to challenge the adoption of a local ordinance on the grounds that the ordinance is arbitrary or unreasonable, a court may assess and award reasonable attorney fees, costs, and damages to a prevailing plaintiff of up to \$50,000.00; and

WHEREAS, the Town Commission of the Town of Dundee desires to establish a municipal policy regarding the preparation and dissemination of a business impact estimate prior to the consideration of a new municipal ordinance when such an estimate is required by Chapter 2023-309, Laws of Florida; and

WHEREAS, the Town Commission further desires to establish procedures and requirements for the preparation and dissemination of a business impact estimate, including the requirement that any private proponent or sponsor of a qualifying new municipal ordinance pay to the Town a “pass through charge” consisting of the fees, deposits, costs, and expenses relating to or pertaining to preparation of a business impact estimate; and

WHEREAS, the Town Commission finds that the policy adopted herein in this Resolution is consistent with, and not preempted by or in conflict with, Section 166.041, Florida Statutes, as amended by Chapter 2023-309, Laws of Florida; and

WHEREAS, because Section 6 of Chapter 2023-309, Laws of Florida, permits the governing body of the Town to choose to either “prepare” the required business impact estimate or “cause to be prepared” the required business impact estimate without allocating financial responsibility for such preparation, the Town Commission finds that the procedures, requirements, and exemptions stated in the policy adopted herein, including the requirement that any private proponent or sponsor of a qualifying new municipal ordinance pay a pass through charge, are consistent with, and not preempted by or in conflict with, Section 166.041, Florida Statutes, as amended by Chapter 2023-309, Laws of Florida; and

WHEREAS, the Town Commission desires to set appropriate public expectations

for the regular preparation and dissemination of information required by Florida general law for the adoption of new municipal ordinances, including, when required, a business impact estimate; and

WHEREAS, it is deemed reasonable, appropriate, and in the public interest to establish a policy regarding the preparation and dissemination of business impact estimates as recommended by Town staff to ensure compliance with Chapter 2023-309, Laws of Florida and Chapter 166, Florida Statutes, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

1. The foregoing whereas clauses and recitals, all of which are incorporated herein by reference, are found by the Town Commission to be true and correct statements that form the factual basis for passage of this Resolution and of the policy attached hereto.
2. The Town of Dundee formally adopts the “Business Impact Estimate Policy” which is attached hereto as Exhibit “A” and incorporated herein by reference and hereby directs the Town Manager to implement said policy and authorizes the Town Manager or her designee to take all necessary and appropriate actions related thereto.
3. All resolutions in conflict with this Resolution are hereby repealed in order to give this Resolution full force and effect.
4. If any portion of this Resolution and Exhibit “A” is declared invalid or unenforceable, then to the extent it is possible to do so without destroying the overall intent and effect of this Resolution and Exhibit “A”, the portion deemed invalid or unenforceable shall be severed herefrom and the remainder of this Resolution and Exhibit “A” shall continue in full force and effect as if it were enacted without including the portion found to be invalid or unenforceable.
5. Provisions of this Resolution and Exhibit “A” may be renumbered or relettered and the correction of typographical and/or scrivener’s errors which do not affect the intent may be authorized by the Town Manager or her designee, without need of Commission action, by filing a corrected copy of same with the Town Clerk.
6. This Resolution shall become effective immediately upon passage.

(the rest of this page left intentionally blank; execution follows on page 4)

INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, in Regular Session, this 28th day of September, 2023.

TOWN OF DUNDEE, FLORIDA

ATTEST:

Sam Pennant, Mayor

Trevor Douthat, Town Clerk

Approved as to form:

Frederick J. Murphy, Jr., Town Attorney

**Exhibit “A”
TOWN OF DUNDEE
BUSINESS IMPACT ESTIMATE POLICY**

I. Definitions:

For purposes of this Policy:

Business or **businesses** means any private for-profit legal activity regularly engaged in by any person, or caused to be engaged in by any person, for the purpose of gain, benefit, or advantage, and includes all forms of organization such as sole proprietorships, partnerships, corporations and business trusts.

A **Business Impact Estimate** is a written document that contains all of the information specified in Section II of this Policy and/or Section 166.041(4) of the Florida Statutes (2023).

An **exempt** or **exempted** ordinance is one that falls within one or more of the categories specified in Section IV of this Policy and/or Sections 166.041(4)(c) and 166.0411(5) of the Florida Statutes (2023) that does not require a Business Impact Estimate to be generated prior to consideration by the Town Commission.

Pass Through Charge means a user fee, assessed by the Town of Dundee, Florida, in a sufficient amount to cover the fees, deposits, costs and expenses incurred by the Town, including staff time, relating to preparation of the Business Impact Estimate for any non-exempt ordinance proposed by, requested by, or sponsored by a private person, firm, entity, or business.

II. Business Impact Estimate; General Provisions and Requirements:

Pursuant to Section 166.041(4) of the Florida Statutes, as amended by Section 6 of Chapter 2023-309, Laws of Florida, the Town of Dundee shall prepare or cause to be prepared a Business Impact Estimate for any new municipal ordinance not exempted by Section IV of this Policy and/or Sections 166.041(4)(c) and 166.0411 of the Florida Statutes (2023). The Business Impact Estimate shall be drafted in accordance with the requirements of Section 166.041(4), Florida Statutes (2023) and shall:

- (1) be attached to and a part of the Town’s formal “Town of Dundee Fact Sheet” and Town Commission summary for the proposed new municipal ordinance;
- (2) contain a summary of the proposed new municipal ordinance, including a statement of the public purpose to be served by the proposed new municipal ordinance, such as serving the public health, safety, morals, and welfare of the Town;

- (3) contain a statement of the estimate of the direct economic impact of the proposed new municipal ordinance on private, for-profit businesses in the Town of Dundee, Florida, including the following, if any:
 - (a) an estimate of direct compliance costs that businesses may reasonably incur if the new municipal ordinance is enacted;
 - (b) identification of any new charge or fee on businesses that will be subject to the proposed new municipal ordinance, or for which businesses in the Town of Dundee will be financially responsible; and
 - (c) an estimate of the Town of Dundee's expected regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs;
- (4) contain a good faith estimate of the number of businesses likely to be impacted by the proposed new municipal ordinance; and
- (5) contain such other relevant information as the Town Commission may from time to time request or require, or as the Town Manager, or his or her lawful designee, may determine necessary in order to present a concise complete overview of the expected economic impact of the proposed new municipal ordinance on businesses in the Town of Dundee, Florida to the Town Commission and the general public.

When prepared, a Business Impact Estimate shall be concise and contain an appropriate level of analysis as required by Section 166.041(4) of the Florida Statutes (2023). The Town shall not be required to procure an accountant or other financial consultant in order to prepare a Business Impact Estimate for a proposed new municipal ordinance. The foregoing notwithstanding, the Town Manager and the Town's Staff may, in their sole discretion and election, decide to engage one or more professional consultants, including an accountant or other financial consultant, to generate or assist with generating a Business Impact Estimate for a proposed new municipal ordinance, subject to lawful budgeting and appropriation restraints, if any, on municipal expenditures.

In the event that a Business Impact Estimate is required for a new municipal ordinance proposed by, requested by, or sponsored by a private person, firm, entity, or business, the Town may assess and collect a Pass Through Charge to cover the fees, deposits, costs and expenses, including the expense of Town Staff time valued at per-hour cost with benefits, incurred by the Town relating to preparation of the Business Impact Estimate.

The Town Commission may, in its sole discretion and by a majority of a quorum present and voting, request that the Town Manager generate or cause to be generated a Business Impact Estimate for any ordinance that is exempt under Section IV of this policy

and/or Sections 166.041(4)(c) and 166.0411 of the Florida Statutes (2023); *provided however*, that nothing in this policy, including the foregoing, is intended to create or shall be construed as creating any additional requirements or mandates to generate a Business Impact Estimate or is intended to waive or shall be construed as a waiver of any exemption from the Business Impact Estimate requirement specified in Section IV below or in Florida general law. A Business Impact Estimate for an otherwise exempt ordinance that is generated at the express request of the Town Commission shall not be subject to the posting or time requirements found in Section III of this policy.

III. Procedures:

- (1) A Business Impact Estimate shall be generated or caused to be generated for any new proposed municipal ordinance that is not exempted by Section IV of this policy and/or Sections 166.041(4)(c) and 166.0411 of the Florida Statutes (2023).
- (2) The Business Impact Estimate shall be generated or caused to be generated by Town Staff prior to the Town Commission's first reading of the proposed new municipal ordinance and shall be attached to and included with the Town's formal "Town of Dundee Fact Sheet" and Town Commission summary.
- (3) The Business Impact Estimate shall be posted on the Town of Dundee's website as soon as practicable, but no later than the date the Notice of Proposed Enactment required by Section 166.041(3)(a), Florida Statutes (2023), for the proposed new municipal ordinance is published in a newspaper of general circulation.
- (4) A Business Impact Estimate does not need to be amended after it is posted on the Town of Dundee's website.
- (5) If a private person, firm, entity, or business proposes, requests, or sponsors a new municipal ordinance that is not exempted by Section IV of this policy and/or Sections 166.041(4)(c) and 166.0411 of the Florida Statutes (2023), the private person, firm, entity or business shall work with the Town Manager and Town Staff to generate or cause to be generated the required Business Impact Estimate at private expense or at public expense with a Pass Through Charge. If a Pass Through Charge is assessed by the Town to a private party, the proposed new municipal ordinance may not be scheduled for first reading before the Town Commission until the Pass Through Charge is satisfied in full.
- (6) The Town Commission may, in its sole discretion, waive any applicable Pass Through Charge. A request for waiver of a Pass Through Charge may be heard by the Town Commission at any time prior to first reading of the applicable proposed new municipal ordinance.
- (7) Numerical values for estimates of economic impact, compliance costs, charges or

fees, regulatory costs, revenues, and likely number of impacted businesses generated by the Town Manager or by Town Staff that are included in a Business Impact Estimate shall be the product of a reasonable and honest effort to convey appropriate relevant information.

IV. Exemptions:

Pursuant to Sections 166.041(4)(c) and 166.0411 of the Florida Statutes (2023), proposed new municipal ordinances in the following categories shall be exempt from the application of this Policy and no Business Impact Estimate shall be required to be submitted or prepared for:

- (1) Ordinances required for compliance with federal or state law or regulation;
- (2) Ordinances relating to the issuance or refinancing of debt;
- (3) Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- (4) Ordinances required to implement a contract or an agreement, including, but not limited to, any federal, state, local, or private grant, or other financial assistance accepted by the Town of Dundee;
- (5) Emergency ordinances;
- (6) Ordinances relating to procurement; and
- (7) Ordinances enacted to implement the following:
 - (a) Part II of Chapter 163 of the Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements, and development permits;
 - (b) Sections 190.005 and 190.046 of the Florida Statutes;
 - (c) Section 553.73 of the Florida Statutes, relating to the Florida Building Code; and
 - (d) Section 633.202 of the Florida Statutes, relating to the Florida Fire Prevention Code; and
- (8) All other ordinances identified in Sections 166.041(4)(c) or 166.0411 of the Florida Statutes that are not expressly mentioned herein.