

## **Chapter 11 PUNTA GORDA DEVELOPMENT IMPACT FEES**

### **Sec. 11-1. Short Title.**

This chapter shall be known and cited as the "Punta Gorda Development Impact Fee Ordinance."

### **Sec. 11-2. Findings.**

The City Council of Punta Gorda, Florida (hereinafter "Council") hereby finds and declares that:

- (a) Punta Gorda, Florida, (hereinafter "City") has experienced New Development, including redevelopment, and population growth during the 1990's and 2000's, which development has strained the adequacy of existing sources of funds to provide public facilities to meet the demands created by New Development and redevelopment. The City has experienced a rate of New Development that increased the strain on the City's ability to provide necessary public facilities and services. Although new development in the City has, consistent with state and national trends, declined in recent years, the City will continue to experience New Development and the need for public facilities and services. The updated impact fees adopted in this Ordinance reflect the development conditions, construction costs, capital improvements planning and policy decisions of the City Council in January, 2011, and are based on the technical data presented in the report "Development Impact Fees-City of Punta Gorda Florida" dated December 6, 2011 by Clarion Associates.
- (b) The Comprehensive Plan for Punta Gorda, as adopted and amended by the Council, and census and population studies predict that growth will continue and will create significant demands for certain public facilities needed to accommodate New Development.
- (c) The City of Punta Gorda's Comprehensive Plan and the Capital Improvements Plan, as amended from time to time, identify the need for additional public facilities necessary to insure the health, safety and welfare of the residents and property owners in the City. These needs include additional facilities and equipment for roads and multi-modal improvements and for parks and trails recreation improvements which are essential responsibilities under the police power authority of the City. The Comprehensive Plan, as of December, 2011, identifies minimal improvements for fire protection and emergency services, law enforcement, and general government related to New Development. The imposition of impact fees for fire, law enforcement and general government, previously suspended until April 21, 2013, will remain suspended indefinitely until significant new growth related improvements needs for these facilities are identified in the future. Previously collected impact fees for police, fire and general governmental facilities may be expended for appropriate facilities in accordance with this Code.

- (d) Impact fees are a reasonable method of regulating New Development to ensure that such New Development pays a proportionate share of the capital costs of public facilities needed to accommodate New Development. The impact fees set forth in this chapter establish a fair and reasonable method of regulating New Development in the City. It is the intent of this chapter that New Development in the City will pay a proportionate share of the average public facility costs related to the provision of facilities needed to accommodate the demand for public facilities generated by New Development.
- (e) Funds collected pursuant to this chapter shall be expended only on the type of public facility for which the fees are collected and only for public facilities which have a "rational nexus" to and provide benefit to New Development on which fees are imposed pursuant to this chapter. Funds collected pursuant to this chapter shall not be expended to maintain or repair existing facilities or to correct existing deficiencies in facility systems needed to serve existing development.
- (f) At regularly scheduled and advertised meetings of the City Council on April 19, 2006, June 21, 2006, November 1, 2006 and December 6, 2006, the Council discussed projected New Development in the City, the projected need for additional public facilities and capital equipment due to projected New Development, the increased costs of providing public facilities and capital equipment needed to accommodate the projected New Development, the fact that the City's existing impact fees are outdated and inadequate to address public facility needs and costs and the need to adopt updated impact fees to help provide additional public facility capacity and capital equipment needed due to New Development.

At regularly scheduled and advertised meetings of the Council on July 6, 2011, November 16, 2011, February 1, 2012 and February 15, 2012, the Council has discussed projected New Development in the City, the projected need for additional public facilities, the need to update the City's impact fees, and has heard public comment.

- (g) The Council hereby finds and declares that all New Development, as defined herein, within the City generates an increased demand for System Improvements for road facilities, and that all new Residential Development within the City also generates an increased demand for park facilities. The Council hereby finds and declares that the System Improvements to be funded by the Impact Fees imposed herein will provide benefit to all New Development in the City.
- (h) The Council hereby finds and declares that the Impact Fees imposed pursuant to this chapter comply with the requirements of Section 163.31801, F.S. Specifically the requirements of Section 163.31801, F.S., are fulfilled as follows: the Impact Fees imposed herein are calculated based on the most recent and localized data, the established separate accounts and accounting procedures provide for appropriate accounting and reporting of Impact Fee collections and expenditures, any administrative or service charge that may be adopted by the Council will reflect actual costs to the City for the creation and maintenance of the Impact Fee system, notice was provided no less than 90 days before the initial effective date of this chapter, and audits of the City performed pursuant to Section 218.39, F.S.,

will include an affidavit from the chief financial officer of the City stating that the City has complied with Section 163.31801, F.S. As the road impact fee schedule adopted on February 15, 2012 reflects reduced impact fees for all New Development for roads, the road impact fee schedule adopted is not subject to the 90 day notice requirement. The park impact fee schedule adopted on February 15, 2012 incorporates increased impact fees that are subject to the 90 day notice requirement in Section 163.31801, F.S. The park impact fees and the road impact fees adopted on February 15, 2012 shall each take effect as provided for in this ordinance in Sections 11-9(b)(1) and (b)(2) respectively.

- (i) The Council has considered the matter of funding additional public facilities, the need for which is reasonably related to New Development and finds that the imposition of updated Impact Fees is critical to the City's ability to provide such facilities. The Council hereby finds and declares that the impact Fees imposed herein are necessary to protect the public health, safety and welfare of residents and property owners in the City and are a reasonable exercise of the City's police power. Therefore, the Council deems it essential and necessary to adopt this chapter as hereinafter set forth.

(Ord. No. 1702, <sec>2, 2-15-12)

#### **Sec. 11-3. Intent.**

- (a) This chapter is intended to regulate New Development by imposing Impact Fees, payable at the time of Building Permit issuance, in an amount based upon the average amount of facility demand attributable to New Development and the average cost of providing the public facilities needed to accommodate New Development. This chapter is intended to allow New Development to help address the burdens of growth. New Development shares in this burden by paying a proportionate share of the reasonably anticipated average costs of public facilities needed to accommodate the demand for additional facilities created by New Development as well as by complying with other appropriate development regulations and approval conditions. This chapter shall not be construed to authorize imposition of Impact Fees for public facility needs attributable to existing development.
- (b) The Development Impact Fees imposed pursuant to this chapter are based upon the data and calculation methodology incorporated in the report titled "Development Impact Fees-City of Punta Gorda, Florida" dated December 6, 2011 by Clarion Associates. Previous impact fee reports approved by the City include: "Growth-Related Capital Improvements & Impact Fees" by TischlerBise, Fiscal, Economic & Planning Consultants, dated May 24, 2006 (hereinafter "Technical Report") and the November 1, 2006 Technical Addendum to that Report.

(Ord. No. 1702-12, <sec> 3, 2-15-12)

#### **Sec. 11-4. Authority.**

In the creation of the Impact Fees, the Council is exercising its Charter home rule powers and its local authority, including police powers, pursuant to Article VII, sections

1(f), 1(g) and 2(b) of the Florida Constitution; the Municipal Home Rule Powers Act, ch. 166, F.S., as amended; and section 163.3161 et seq., F.S., as amended. The aforementioned provisions authorize and require the City; to provide and finance public facilities; to provide for the health, safety and general welfare of the City; to coordinate the provision of adequate public facilities with land development; and to implement its Comprehensive Plan. Furthermore, the Local Government Comprehensive Planning and Land Development Regulation Act, section 163.3202, F.S., encourages the use of innovative land development regulations, including Impact Fees. The provisions of this chapter shall not be construed to limit the scope of the City's power necessary to accomplish these purposes.

#### **Sec. 11-5. Definitions.**

As applied in this chapter, the following words and terms shall have the following meaning, unless another meaning is clearly intended:

**Applicant** shall mean the property owner, or duly designated agent of the property owner, of land on which a Building Permit is requested and Impact Fees are due pursuant to this chapter, or shall mean the property owner, or duly designated agent of the property owner, of land identified in a credit agreement pursuant to Section 11-12(d) where such property owner or agent is responsible for the provision of System Improvement(s).

**Appropriation** shall mean funds identified in the CIP with the legal authority to expend such funds up to a certain dollar amount.

**Building Permit** shall mean the permit required for new construction, remodeling, redevelopment and additions pursuant to the Land Development Regulations of the City, as amended. If no Building Permit is required for the construction or occupation of a structure then Building Permit shall be deemed to include any permit or other form of final City approval for the construction, change of use or occupancy of a structure, including, but not limited to, the conversion of a hotel, motel or other lodging, with or without cooking facilities, to condominium or other residential use. The term "Building Permit," as used in this chapter, shall be deemed to include a Mobile Home installation permit issued pursuant to the City building code or any equivalent permit or approval, and shall include occupational licenses.

**Capital Improvements Program (CIP)** shall mean the five-year schedule of capital improvements adopted by the City annually as a part of the City budget process.

**Capital Improvement Projects** shall mean all projects for which funds are appropriated in the CIP. Capital improvement projects, including, but not limited to, capital equipment, land, facilities and site improvements, that are funded in whole or in part with Impact Fee funds must cost at least \$5,000.00 and have a useful life of three (3) years.

**City Council or Council** shall mean the City Council of Punta Gorda, Florida.

**Collecting Agency** shall mean the City department or official authorized to issue Building Permits.

**Development** shall have the meaning given it in section 380.04, F.S., as may be amended from time to time, subject to exclusions contained in this chapter.

**Demand Unit** shall mean the unit of public facility demand associated with various land uses and types of New Development as identified in the applicable Technical Report and used to calculate the impact fees listed for each type of New Development in the Impact Fee schedules in Section 11-9 herein.

**Dwelling Unit** shall mean a room or interconnected rooms, containing sleeping and sanitary facilities and one kitchen provided for the exclusive use of a single household. The term "Dwelling Unit," as used in this chapter, shall be deemed to include mobile home and manufactured home dwellings. The term housing unit may be used interchangeably with Dwelling Unit in the calculation and imposition of impact fees.

**Fire System Improvement** means System Improvement that add capacity to the City's fire and rescue system, including facilities, fire suppression vehicles and equipment and emergency medical services vehicles and equipment.

**Floor Area** means the total floor area square footage of living space in a Single-Family Detached Residential Dwelling Unit. Living space shall be determined consistent with the definition and approach used by the Charlotte County Property Appraiser.

**General Government System Improvement** means System Improvements that add capacity to the City's administrative office space, capital equipment, vehicle fleets and other capital expenditures for the general governmental functions of the City.

**Governmental Uses** shall mean buildings or facilities owned and operated by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district, a school district, a municipal corporation, or a charter school organized and approved as a public school under section 228.056, F.S.

**Gross Floor Area (gfa)** shall mean the total square footage of a nonresidential building measured in feet from the exterior faces of exterior walls or other exterior boundaries of the building, excluding parking areas within the interior of the building. If a site contains multiple buildings, the gross floor area shall be computed separately for each building. The definition of Gross Floor Area in the ITE Trip Generation Manual shall be used to resolve any questions regarding calculation of gross floor area.

**Impact Fee** shall mean a monetary exaction imposed prior to Building Permit issuance and calculated based upon a New Development's proportionate share of the average cost of capital improvements needed to address the additional capital facility capacity and equipment needed to accommodate the demand for public facilities created by New Development.

**ITE Trip Generation Manual** shall mean the report entitled "Trip Generation" (Seventh Edition, 2003) of the Institute of Transportation Engineers and any official updates thereto, as approved and accepted by the City.

**New Development** shall mean the carrying out of any building activity or the making

of any material changes in the use of a structure or land that requires the issuance of a Building Permit, as defined in this chapter, and which generates demand for capital facilities over and above the previously existing documented use or development of the structure or land. New Development shall include changes in the use of a structure, for example the conversion of a structure from lodging (with or without cooking facilities) to residential use, whether or not physical changes are required to an existing structure. New Development excludes Governmental Uses as herein defined.

**Nonresidential Development** shall mean all New Development other than Residential Development and Governmental Uses as herein defined. Nonresidential Development includes, but is not limited to, industrial, manufacturing, warehousing, mini-warehousing, lodging (with or without cooking facilities), schools and daycare, hospital, nursing home, general office, medical-dental office, business park, developments containing five or more dwelling units in single ownership for rental use only, and commercial uses, and includes those uses specified in the ITE Trip Generation Manual under Land Use Code Series 100, 251, 252, 253, 254, 255, 300, 400, 500, 600, 700, 800 and 900. Nonresidential Development shall also include structures operated by a social service organization to provide residential care to children, the aged, the destitute and the physically, mentally and/or emotionally challenged.

**Other Residential Development or Multi-Family Residential Development** means Residential Development other than Single-Family Detached Residential Development and includes, but is not limited to, condominium development, multi-family development and townhouse/duplex development.

**Parks System Improvement** means land, capital improvements, capital facilities and capital equipment that add capacity to the City park system, including City-wide parks and associated improvements as well as recreational trails, open space and conservation land or easements and associated improvements.

**Police System Improvement** means land, capital improvements, capital facilities and capital equipment that add capacity to the City's police system.

**Project Costs** shall mean amounts spent or authorized to be spent in connection with the acquisition, planning, legal, fiscal, economic, engineering, administrative services, financing, construction, equipping, development and other costs associated with a public facility project.

**Residential Development** shall mean all development that is not considered to be Nonresidential Development as defined herein, excluding those uses specified in the ITE Trip General Manual under Land Use Code Series 000.

**Road System Improvement** means land, capital improvements, capital facilities and capital equipment that add capacity to the City's collector road system or improve the functionality and safety of the road system. Road System Improvements may include, by way of example, extensions, widening intersection improvements, adding and upgrading signalization, improving pavement conditions, removing pedestrian/bicyclists from automobile travel lanes by providing bike lanes or sidewalks, removing vehicles from the road network by providing alternate travel

modes, and any other improvements that add capacity or improve the traffic flow, safety and circulation. Given the unique character and design of the grid street pattern and pedestrian/bicycle activity within the Community Redevelopment Area (hereinafter "CRA"), which encompasses the City's historic urban core, improvements related to non-collector roads that otherwise fulfill the requirements of a Road System Improvement qualify for impact fee expenditures under this definition.

**Service Charge** shall mean a charge that, if established at the option of the Council, shall be collected in addition to the applicable Impact Fee amount for expenses associated with the establishment, amendment, periodic update and administration of the Impact Fee system and ordinance. If adopted and imposed by resolution of the Council, the Service Charge shall be reviewed as part of the annual review provided for in Section 11-10 or at any such other times as deemed necessary based upon information submitted by the City Manager. The Service Charge, if adopted, is in addition to and shall be paid separately from the Impact Fee, but shall be payable at the time of Building Permit issuance and shall for the purpose of defraying expenses of creating and maintaining the Impact Fee system, including but not limited to costs associated with consultants, administrative staff, equipment, software and other expenses incurred in managing and maintaining the Impact Fee system.

**Single-Family Detached Residential Development** shall mean Residential Development consisting of a detached structure containing only one Dwelling Unit per structure and intended for occupancy by a single household.

**System Improvements** shall mean Capital Improvement Projects, as defined in this chapter, that provide additional capacity through construction of additional facilities or improvements that increase capacity, function or safety of a facility to accommodate New Development and that serve multiple development projects, multiple neighborhoods or the entire City. System Improvements may include, but are not limited to, land, facilities, site improvements, furnishings, capital equipment and vehicles. System Improvements shall not include property, capital facilities or capital equipment needed solely to serve a specific development. System Improvements shall not include replacement, rehabilitation, operations or maintenance of land, facilities or equipment.

**System Improvement Cost** shall mean amounts spent or appropriated in connection with the planning, financing, acquisition, construction and/or development of a System Improvement, including without limitation, the costs of the land acquisition and development, surveying, site testing, construction, design, engineering, construction management and inspection, permitting, legal services, financial services and administrative costs. Ancillary improvements directly related to a System Improvement, including, but not limited to, parking, drainage improvements, landscaping and capital equipment and furnishings shall be considered part of the cost of the System Improvement. System Improvement Costs shall not include costs related to operations, maintenance, rehabilitation or replacement of capital facilities or equipment.

**Technical Report** shall mean the report titled "Development Impact Fees-City of Punta Gorda, Florida" dated December 6, 2011 by Clarion Associates. Previous impact fee reports approved by the City include: "Growth-Related Capital Improvements & Impact Fees" by TischlerBise, Fiscal, Economic & Planning Consultants, dated May 24, 2006

and shall include the November 1, 2006 Technical Addendum to that Report. The Technical Report is adopted by reference and is incorporated herein as if set forth in its entirety. The Technical Report shall be available from the City Clerk.

(Ord. No. 1702-12, <sec> 4, 2-15-12; Ord. No. 1887-17, <sec> 1, 11-15-2017)

**Sec. 11-6. Applicability.**

- (a) This chapter shall be uniformly applicable to all New Development as defined in this chapter, and the appropriate Impact Fee shall be collected prior to issuance of a Building Permit, as defined in this chapter, except where a Building Permit is issued for additions, remodeling, rehabilitation or other improvements to an existing structure or reconstruction of a damaged or destroyed structure, whether voluntary or involuntary, which result in no net increase greater than 1,000 square feet of Floor Area for Single-Family Residential, no net increase in the number of dwelling units for Other Residential Development or no net increase greater than 1,000 gross square feet for a nonresidential structure. The Applicant has the burden of submitting documentation to the City proving the type and amount of previously existing development or use for determination by the City of the net increase, if any, for calculation of Impact Fees due. No refund of Impact Fees previously paid shall be provided for any decrease in the amount or type of development.
- (b) Where this chapter becomes applicable due to (i) additions, remodeling, rehabilitation or other improvements to an existing structure, (ii) reconstruction of a damaged or destroyed structure, whether voluntary or involuntary, (iii) a change in the use of a structure or land that increases the demand for public facilities, (iv) an increase in Floor Area for Single-Family Residential or in the number of residential dwelling units for Other Residential Structure, or (v) an increase in the gross square footage of a nonresidential structure, the amount of the Impact Fees shall be based solely upon the net increase in the demand for public facilities based on a comparison of the Impact Fees calculated for the prior development/use to the Impact Fees calculated for the proposed development/use. The Applicant has the burden of submitting satisfactory documentation to the City proving the type and amount of previously existing use/development for use by the City in determining the net increase for calculation of the Impact Fees due.
- (c) Notwithstanding subsections (a) or (b) above, this chapter shall not be applicable to Building Permits issued by the City prior to 8:00 a.m. on February 1, 2007, when the Applicant proceeds to issuance of Certificate of Occupancy without invalidation, suspension or abandonment of the corresponding Building Permit. Such development shall continue to be subject to Ordinance 916-89, as amended.
- (d) If the imposition of this chapter on any New Development is determined by the City Manager, the Council or a court of competent jurisdiction to be unlawful, such New Development shall continue to be subject to Ordinance 916-89, as amended.

(Ord. No. 1702-12, <sec> 5, 2-15-12)

**Sec. 11-7. Establishment of Impact Fee Districts.**

In furtherance of the implementation of this chapter, the Council hereby establishes the following benefit districts for the identified Impact Fees:

- (a) Park Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time;
- (b) Road Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time;
- (c) Police Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time;
- (d) Fire Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time;
- (e) General Government Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time.

**Sec. 11-8. Imposition of Impact Fees.**

No Building Permit shall be issued for New Development in the City unless the Applicant therefore has paid the applicable Impact Fees, and applicable Service Charge if established by resolution of the Council, imposed by this chapter or imposed by Ordinance 916-89, as applicable. Any Building permit issued for New Development without payment by the Applicant and collection by the City of the applicable Impact Fees, and Service Charge if applicable, shall be null and void.

However, Impact Fees for Police, Fire and General Governmental as provided for in Section 11-9(b), Subsections (3), (4) and (5) are hereby suspended indefinitely until the demand for additional capacity in such facilities related to New Development has increased and the Council determines that such Impact Fees should be updated and imposed on New Development. All impact fees for change in use as provided for in section 11-6(b)(iii) are also hereby suspended indefinitely.

(Ord. No. 1678-11, <sec> 1, 4-20-11; Ord. No. 1702-12, <sec> 6, 2-15-12)

**Sec. 11-9. Calculation of Impact Fee and Impact Fee Schedules.**

- (a) The City shall calculate the Impact Fee due under this chapter by:
  - (1) Verifying the number and type of Demand Units which are proposed to be constructed as shown on the Building Permit application by land use type, using Floor Area for Single-Family Detached Residential Development, dwelling units for Other Residential Uses, gross square footage of floor area for Nonresidential Uses and specified Demand Units for certain types of Nonresidential Uses; and
  - (2) Multiplying the number of Demand Units for each land use type represented by the proposed development by each applicable Impact Fee pursuant to subsection (b) of this section. The total Impact Fees due shall be the sum of the amounts calculated for each applicable Impact Fee in subsection (b) of this section.
  - (3) If the land use applicable to a development is not listed in the fee schedules

in subsection (b) below, the fees for the most appropriate land use in the fee schedules, based on the characteristics of the proposed development as determined by the City Manager, shall be imposed. If the Applicant believes that none of the land uses in the fee schedules are appropriate, the Applicant shall be responsible for timely filing a petition under Section 11-12 of this chapter. The land use characteristics and descriptions in the ITE Trip Generation Manual shall be used to determine the most appropriate land use. When multiple types of development are included in a building, the Impact Fees due shall be calculated for each type of development and included in the total Impact Fees due.

- (4) Where a final petition determination has been made by the City Manager or a final decision issued by the Council after a timely appeal, the Impact Fees due shall be calculated based on the petition determination or Council decision.

(b) Applicable Impact Fee schedules.

- (1) Park Impact Fee Schedule (effective as of 8:00 a.m., May 16, 2012):

ITE Code/Land Use	Impact Fee per Demand Unit
<b><i>Residential Development</i></b>	
All Other Housing Units (per dwelling unit)	\$322
Single-Family Detached (by Floor Area)	
1699sf or less	\$564
1700 - 1799	\$604
1800 - 1899	\$644
1900 - 1999	\$685
2000 - 2099	\$725
2100 - 2199	\$725
2200 - 2299	\$765
2300 - 2399	\$806
2400 - 2499	\$846
2500 - 2599	\$846
2600 - 2699	\$886
2700 - 2799	\$886
2800 - 2899	\$926
2900 - 2999	\$967
3000 - 3099	\$967
3100 - 3199	\$1,007
3200 - 3299	\$1,007
3300 or larger	\$1,047

Park Impact Fee Schedule (effective until 8:00 a.m., May 16, 2012):

ITE Code/Land Use	Impact Fee per Demand Unit
<b><i>Residential Development (per dwelling unit)</i></b>	
Single Family Detached	\$ 289.50
All Other Housing Types	\$ 289.50

(2) Road Impact Fee Schedule (effective as of 8:00 a.m., February 16, 2012):

ITE Code/Land Use	Impact Fee per Demand Unit
<b><i>Residential Development (per dwelling unit)</i></b>	
All Other Housing Units (per dwelling unit)	\$161
<b>Single-Family Detached (by Floor Area category)</b>	
1699 sf or less	\$288
1700 - 1799	\$306
1800 - 1899	\$323
1900 - 1999	\$346
2000 - 2099	\$358
2100 - 2199	\$375
2200 - 2299	\$387
2300 - 2399	\$404
2400 - 2499	\$415
2500 - 2599	\$427
2600 - 2699	\$439
2700 - 2799	\$450
2800 - 2899	\$462
2900 - 2999	\$473
3000 - 3099	\$485
3100 - 3199	\$496
3200 - 3299	\$508
3300 or larger	\$514
<b><i>Nonresidential Development (per gross square foot)</i></b>	
820 Retail/Restaurant	\$ 0.77
710 Office	\$ 0.33
610 Hospital	\$ 0.49
770 Business Park	\$ 0.38
110 Light Industrial	\$ 0.20
150 Warehousing	\$ 0.10
151 Mini-Warehousing	\$ 0.07
<b><i>Other Nonresidential Development (as indicated)</i></b>	
320 Lodging (per room)	\$ 169.44
520 Elementary School (per student)	\$ 25.62
530 Secondary School (per student)	\$ 37.05
565 Day Care (per student)	\$ 64.72
254 Assisted Living (per bed)	\$ 80.05

(3) Police Impact Fee Schedule. (Suspended Indefinitely)

(4) Fire Impact Fee Schedule. (Suspended Indefinitely)

(5) General Governmental Impact Fee Schedule. (Suspended Indefinitely)

(Ord. No. 1583-09, <sec> 1, 2-28-09; Ord. No. 1626-10, <sec> 1, 1-20-10; Ord. No. 1663-11, <sec> 1, 1-19-11; Ord. No. 1678-11, <sec><sec> 2-3, 4-20-11; Ord. No. 1702-12, <sec> 7, 2-15-12)

**Sec. 11-10. Administration of Impact Fees.**

- (a) **Collection of Impact Fee and Service Charge.** Impact Fees calculated and imposed pursuant to this chapter shall be collected by the Collecting Agency prior to issuance of a Building Permit. If adopted by resolution of the Council, the Service Charge shall be collected by the Collecting Agency at the same time as collection of the Impact Fees.
- (b) **Accounting and Reporting of Impact Fee Collections and Expenditures.** Impact Fees shall be transferred from the Collecting Agency to the City Finance Department which shall be responsible for placement of such funds into the appropriate separate accounts by type of Impact Fee and applicable benefit district. The Service Charge, if adopted by resolution of the Council, shall be placed in a separate account identified for management of the Impact Fee system and disbursed as set forth in this chapter. The City Finance Department shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all moneys received, including revenue by Building Permit, and which shall document and ensure that the disbursement of funds from each account shall be used solely and exclusively in accordance with provisions of this chapter. For purposes of petitions for refunds under Sec. 11-12 of this chapter, the expenditure and appropriation of Impact Fees shall be deemed to occur in the same sequential order as the collection of Impact Fees, in other words, the first fee in shall be the first fee out.
- (c) **Trust funds established.**
- (1) There is hereby established a separate Impact Fee trust fund account for each of the following Impact Fees: parks, roads, police, fire and general government. If existing Impact Fee accounts comply with the requirements of this chapter, then such accounts may be deemed to be the Impact Fee trust fund accounts established herein.
  - (2) Funds withdrawn from those accounts must be used solely in accordance with the provisions of subsection (d) of this section. The disbursement of such funds shall be in accordance with the Capital Improvement Program of the City.
  - (3) Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account. The funds of these accounts shall not be commingled with other funds or revenues of the City.
- (d) **Use of funds collected.** Impact fees collected pursuant to this chapter shall be expended only for the type of System Improvements for which the Impact Fee was imposed and only within the Impact Fee benefit district where the Impact Fee was collected. Impact Fees shall be expended only on System Improvements needed to accommodate the demand generated by New Development. Impact Fees shall not be expended to eliminate any deficiencies in facilities, land or equipment related to existing development or that may result from adoption of an increased level of service. The funds collected by reason of this chapter shall be used exclusively for the purpose of undertaking System Improvements or for

financing directly, or as a pledge against bonds, revenue certificates and other obligations of indebtedness, the costs of System Improvements.

- (e) **Annual review and modification.** Beginning with adoption of the Fiscal Year 2007-2008 Budget, the City shall annually, no later than 120 days after the annual capital budget and capital improvements program adoption process, review the Impact Fee ordinance procedures, assumptions, formulas, benefit district designations and fee calculations, and issue an annual report. The annual report shall be distributed to the Council by the City Manager. The annual report should, at a minimum, include information by individual benefit district and facility type on account balances, annual collections, annual expenditures and System Improvement projects funded in whole or in part with Impact Fees. The annual report should present any recommendations related to the Impact Fee system, including, but not limited to, the need for any updates to the Impact Fee calculations, district boundaries and ordinance. In reviewing the Impact Fee system, the City may consider: development occurring in the prior year, construction of proposed public facilities, changing facility needs, inflation and other economic factors, revised cost estimates for public facilities, land and/or improvements, changes in the availability of other funding sources applicable to impact-fee-related capital improvements and any other factors as may be relevant. The data in the annual report may be organized based on the City's fiscal year or calendar year. The annual report shall review the amount of service charges collected and the costs associated with the creation, administration, management and updating of the Impact Fee system and shall provide recommendations on any changes to the amount of the service charge. The annual report shall specifically analyze the need to incorporate new local data to comply with the requirement in section 163.31801, F.S., that the fees be based on the most recent and localized data. Nothing in this chapter shall be construed to limit the Council's authority to amend this chapter at any time.
  
- (f) **Triennial review and modification.** The City shall conduct a complete review of the Impact Fees every three years to determine if changes in costs, facility needs, development patterns, demographics and any other relevant factors indicate a need to update the Impact Fee calculations, data, methodology or other components of the Impact Fee system. The triennial report issued based on this review shall be distributed to the Council by the City Manager. The triennial report may be used to fulfill the annual report requirement for that year. The City shall endeavor to adopt any changes and updates to the Impact Fee system, including updated fee calculations, within a year of completion of the triennial report.

#### **Sec. 11-11. Service Charge.**

Service Charges may be established at the option of the Council. If adopted by resolution of the Council, the Service Charges shall be collected from each Applicant and shall be distributed as appropriate for Impact Fee administration, for financial administration and for costs related to the establishment, amendment and annual review/update of the Impact Fee ordinance and methodology. The Service Charge may also be used to defray expenses related to petitions, appeals and/or legal challenges to the Impact Fee system. The Service Charge, if adopted, shall be set based upon a

review of incurred and anticipated costs to create, administer, update and manage the Impact Fee system and shall not exceed actual costs to the City.

**Sec. 11-12. Administrative Petitions for Impact Fee Determinations, Refunds and Credits.**

**(a) Petition process.**

- (1) Petitions for an Impact Fee determination, refund of Impact Fees and/or credit against Impact Fees shall be submitted using the petition process, requirements and time limits provided herein. All petition requests, except petitions for refunds under subsection (c) below, shall be accompanied by a fee of \$100.00.
- (2) All petitions shall be submitted to the City Manager for processing and preparation of a staff report and recommendations by the appropriate staff on the petition, and the final determination on the petition shall be issued by the City Manager. The staff report and recommendations shall be forwarded to the City Manager no later than sixty (60) days after the filing of a complete petition. The City Manager shall, no later than ninety (90) days after the filing of the complete petition, issue a written determination of the petition, with the reasoning for the determination, and, if needed, direct the appropriate City staff to take the actions necessary to implement the determination.
- (3) Upon written agreement by the City Manager and the petitioner, the time limits in this section may be waived for any reason, including, but not limited to, the submittal of additional data and supportive statements by the petitioner. The City Manager, or his authorized representative, is authorized to determine whether a petition is complete and whether additional data or supporting statements by an appropriate professional is needed. If the City Manager, or his authorized representative, determines that the petition is not complete, a written statement detailing the insufficiencies of the petition shall be provided to the petitioner within thirty (30) days of initial filing of the petition. The date of such written determination of insufficiency shall toll the time limits established in this section until submittal of a complete petition.
- (4) Except as otherwise provided in this subsection, the filing of a petition shall stay action by the City on the application for Building Permit and any other City action related to the development. No Building Permit or other City action shall be issued for development for which a petition has been filed unless the total Impact Fees due, as determined by the City and including any applicable Service Charge, have been paid in full or a sufficient bond or letter of credit satisfactory to the City Attorney has been filed with the City.

- (b) Petition for Impact Fee determination.** Any Applicant prior to or in conjunction with the submission of an application for a Building Permit or within thirty (30) days of the date of payment of Impact Fees, may petition the City Manager for a determination that: (i) the amount of the Impact Fees imposed on the New Development is inappropriate based on the specific land use category applied to the Residential or Nonresidential Development and/or based on the amount of

development (dwelling units and/or gross square footage) used to calculate the Impact Fees; or (ii) the Impact Fees are otherwise unlawfully imposed. The petition shall specify in detail the basis on which the Applicant asserts that the amount of the Impact Fees is inappropriate or unlawful. The petition shall be on a form provided by the City and shall, at a minimum, include: identification of the disputed factor(s), a detailed statement asserting the basis for the dispute, the data relied upon by the petitioner, a detailed statement by a qualified professional engineer, planner or other appropriate professional, and, if filed after payment of Impact Fees, a dated receipt for payment of the Impact Fees issued by the City's building division. Failure to timely file a petition for Impact Fee determination shall waive any right to challenge, review or recalculate the Impact Fee payment.

**(c) Petition for refund of Impact Fees.**

- (1) The 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 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.
- (2) Only the current owner of property may petition for a refund. A petition for refund must be filed within ninety (90) days of any of the above-specified events giving rise to the right to claim a refund. Failure to timely file a petition for refund shall waive any right to an Impact Fee refund.
- (3) The petition for refund shall be submitted to the City Manager on a form provided by the City for such purpose. The petition shall contain a notarized affidavit that petitioner is the current owner of the property; a certified copy of latest tax records for the City of Punta Gorda showing the owner of the subject property; a copy of a dated receipt for payment of the Impact Fee on the subject property issued by the City's building division; and a statement of the basis upon which the refund is sought. In the case of any uncertainty regarding the petitioner's right to the refund, the petitioner shall be responsible for providing adequate documentation supporting petitioner's legal rights and agreeing to indemnify and defend the City against any other claims to the refund.
- (4) Any money refunded pursuant to this subsection shall be returned with interest at the rate of three percent per annum.

**(d) Petition for credits against Impact Fees.**

- (1) Any Applicant, as defined in this chapter, who elects to construct or dedicate all or a portion of a System Improvement, as defined in this chapter, or, who escrows money with the City for the construction of a System Improvement, may, if all criteria in this chapter and this subsection (d) are fulfilled, be granted a credit for such contribution against Impact Fees otherwise due for the same type of System

Improvement. The Applicant must, prior to the Applicant's construction, dedication or escrow of the System Improvement, submit a petition on a form provided by the City, obtain a determination of credit eligibility and the amount of any credit, and enter into a credit agreement with the City. The petition for credit shall contain, at a minimum, the following: a certified copy of the most recently recorded deed for the subject property, preliminary engineering plans and certified costs estimates by an architect, engineer or other appropriate professional for the proposed improvement, legal description of any land proposed to be contributed, proposed schedule for completion of any construction/dedications, identification of the proposed improvement in the current adopted City CIP and the amount of Impact Fee funding for the improvement, and identification in detail of the development against which the credits are to apply or which will pay the Impact Fees to be used for the credit, including the land use type(s), number of units/gross floor area, anticipated development schedule and legal descriptions of the subject property. Any appeal of petition determinations on credits must be filed, heard and determined prior to the Applicant's construction, dedication or escrow for which the credit is requested. Failure to timely file a petition for Impact Fee credits shall waive any right to Impact Fee credits.

- (2) If it is determined that the System Improvement is in the adopted, current City CIP and is funded in whole or in part with City Impact Fee revenue, the City Manager shall determine the appropriate amount of the credit. The amount of the credit shall be based on actual costs certified by a professional engineer or architect submitted by the Applicant and reviewed and approved by the appropriate City department. In no event shall the credit exceed the amount of Impact Fees budgeted for that System Improvement or the amount of the Impact Fees for the same type of System Improvements that are due from the development requesting the credit, whichever amount is smaller. If the Impact Fees due exceed the amount of the credit, the Applicant shall pay the Impact Fees due less the credit at the time of issuance of the Building Permit.
- (3) If a credit petition is approved, the Applicant and the City shall enter into a credit agreement which shall provide for, but is not limited to, the following: the process to be used to verify actual costs, the value of any dedicated land or methodology to determine the value of any dedicated land, the obligations and responsibilities of the Applicant, including, but not limited to: (i) public bidding requirements, (ii) engineering, design and construction standards and requirements to be complied with, (iii) insurance and indemnification requirements, and (iv) project inspection standards and responsibilities, (v) timing of the actions to be taken by the Applicant, (vi) transfer of title to land and improvements, (vii) process for submittal of credit payment requests, and (viii) timing of payments by the City. No Impact Fee credits shall be paid or provided until any land has been dedicated and conveyed to the City and/or the facilities have been constructed and accepted, or alternatively, until a bond has been posted to ensure the conveyance and/or construction. The City's obligation to pay Impact Fee credits shall be limited to the Impact Fees collected from the development for a period not to exceed ten (10) years from the date of approval of the agreement. The credit agreement shall provide for

forfeiture of any Impact Fee credit remaining at the end of such ten (10) year period. The credit Applicant shall agree to provide recorded notice to subsequent purchasers/owners of the property regarding the credit, if any, that may be available to such purchasers and shall agree to indemnify the City for any and all costs and liabilities arising from any claims by others related to the Impact Fee credit.

**Sec. 11-13. Appeal to City Council.**

- (a) A petition determination by the City Manager shall be final unless a written notice of appeal to the Council is filed with the City Manager within 20 days of the date of the written determination by the City Manager, together with a payment of a \$150.00 fee. Such appeal may be filed by the Applicant, the petitioner, or by any officer, department, board, commission or agency of the City. Failure to timely file a request for review of a petition determination shall waive any right to further review of the petition determination.
- (b) Appeals shall be filed on a form provided by the City and accompanied by ten (10) copies of all documents for consideration by the Council, including, but not limited to, the petition submittal and all accompanying documents, the petition determination, any additional documents, exhibits, technical reports or other written evidence the appellant wants the Council to consider. Should the appellant want to submit additional written material after the initial filing of notice of appeal, ten complete copies of such material shall be submitted to the City Manager no later than thirty (30) days prior to the hearing date. If any material is submitted after that date, the Council shall reschedule the hearing to a later date to provide adequate time for review of the material by City staff and the City Manager notwithstanding the ninety (90) day period established under Sec. 11-12(d) of this chapter.
- (c) The Council on review shall have full power to affirm, reverse or modify the action of the City Manager so long as such Council action is based on applicable law and the provisions of this chapter. The appeal shall be heard by the Council not more than 90 days after the appeal is filed by the appellant, unless the appellant and City Manager agree in writing to a later time. The decision of the Council shall be reduced to writing and signed by the Mayor.
- (d) If a person decides to appeal any decision made by the City Council, such person will need a record of proceedings, and for such purpose the person may need to ensure that a verbatim record of proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.

**Sec. 11-14. Judicial Review.**

Any request for review of a decision by the Council under this chapter shall be made by filing an appeal within 30 days of execution of Council's written determination by the Mayor with the circuit court in accordance with the Florida Rules of Appellate Procedure.

**Sec. 11-15. Effect of the Impact Fee on Zoning and Subdivision Regulations.**

This chapter shall not affect, in any manner, the permissible use of the property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the land development regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

**Sec. 11-16. Impact Fee as Additional or Supplemental Requirement.**

The payment of Impact Fees imposed pursuant to this chapter is additional and supplemental to, and not in substitution of, any other regulations and requirements imposed by the City on the development of land or the issuance of Building Permits. In no event shall a property owner be required to pay for System Improvements related to providing new capacity for New Development in an amount in excess of the amount calculated pursuant to this chapter; provided however, that a property owner may be required to provide or pay, pursuant to ordinances, policies or regulations of the City, County or State of Florida, for public facility improvements in addition to payment of Impact Fees pursuant to this chapter. Nothing in this chapter shall be construed as a guarantee of adequate public facilities at the time of development of any particular property.

**Sec. 11-17. Alternative Collection Method.**

In the event that the appropriate amount of Impact Fees due pursuant to this chapter are not paid prior to the issuance of a Building Permit, the City may elect to collect the Impact Fees due by any other method which is authorized by law.

**Sec. 11-18. Liberal Construction.**

The provisions of this chapter shall be liberally construed to effectively carry out its purpose in the interest of public health, safety, welfare and convenience.

**Sec. 11-19. Severability.**

Should any sentence, clause, part or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this chapter as a whole, or any part thereof other than the part declared to be invalid.