

Chapter 11A PUNTA GORDA AFFORDABLE HOUSING IMPACT FEE INCENTIVES

Sec. 11A-1. Short Title.

This Chapter shall be known and cited as the "Punta Gorda Affordable Housing Impact Fee Incentives."

Sec. 11A-2. Findings.

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

- (a) Punta Gorda, Florida, (hereinafter "City") has adopted updated impact fees established in Chapter 11, Punta Gorda Development Impact Fee Ordinance, to require new development to pay a proportionate share of the average public facility costs related to the provision of capital facilities needed to accommodate the demand for such facilities generated by new development.
- (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 public facilities needed to accommodate new development.
- (c) The Comprehensive Plan for Punta Gorda, as adopted and amended by the Council, identifies the need for additional units of affordable housing within the City, including both owner-occupied and rental units.
- (d) In balancing the need for new development to contribute to funding public facilities needed to accommodate new development and the need for additional affordable housing in the City, the City Council has determined that it is in the public interest to encourage the provision of affordable housing by providing the affordable housing incentives established herein.
- (e) The City is providing for the deferral of the payment of City imposed impact fees for qualifying owner-occupied affordable housing. This program provides only for the deferred payment of the impact fees due, not for the reduction or waiver of City imposed impact fees.
- (f) The City is providing for payment of impact fees due on Rental Affordable Housing Units on an installment basis over a specified number of years. This program provides only for installment payment of the impact fees due, not for the reduction or waiver of City-imposed impact fees.
- (g) The City is providing for the creation of an Impact Fee Transfer when the existing demand for capital facility capacity generated by development on one site is permanently reduced. Such Impact Fee Transfer units may be applied against the City imposed impact fees due on new affordable housing units developed on other property in the City.

(Ord. 1558-08, <sec> 2, 9-3-08; Ord. No. 1678-11, <sec> 4, 4-20-11)

Sec. 11A-3. Intent.

This Chapter is intended to encourage the provision of new units of owner-occupied affordable housing within the City of Punta Gorda by providing for deferral of payment of City imposed fees on qualifying units of Affordable Housing and for Impact Fee Transfers that may be used in payment of City imposed impact fees for new units of Affordable Housing where the demand for capital facilities generated by previously existing development has been permanently reduced on another site. These programs are intended to further the affordable housing goals and objectives in the Housing Element of the City's Comprehensive Plan.

Sec. 11A-4. Authority.

In the creation of the Impact Fee Deferral Program, the Impact Fee Transfer Program and the Rental Impact Fee Installment Payment Program, 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 provisions of this Chapter shall not be construed to limit the scope of the City's power necessary to accomplish these purposes.

(Ord. No. 1558-08, <sec> 3, 9-3-08)

Sec. 11A-5. Definitions.

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

Affordable Housing shall mean newly constructed, owner-occupied dwelling units that are intended to be and are owned and occupied by families meeting federal guidelines for moderate income families, low income families or very low income families. The provisions of Sections 11A-7 and 11A-8 of this Chapter 11A shall apply only to Affordable Housing dwelling units fulfilling these criteria and on which City imposed Impact Fees are due.

City Imposed Impact Fees shall mean the impact fees imposed by the City of Punta Gorda pursuant to Chapter 11 of the City Code. Water and Sewer impact fees, connection fees or capacity fees imposed by the City are excluded from the Affordable Housing Incentives Programs.

Impact Fee Transfer Receiving Site or Receiving Site shall mean the property on which Affordable Housing is being provided and on which an Impact Fee Transfer created by the permanent reduction of demand for capital facilities on a Sending Site is applied pursuant to this Chapter.

Impact Fee Transfer Sending Site or Sending Site shall mean the property on which demand for capital facilities is permanently reduced as a result of demolition, redevelopment or other activity which permanently reduces or eliminated the demand for capital facilities which was previously generated by development on the site. The Impact Fee Transfers created by this reduction in capital facility demand may be

permanently transferred and applied against the City imposed impact fees due on new Affordable Housing provided on an Impact Fee Receiving Site. Impact Fee Transfers may not be created from demolition or redevelopment of non-conforming uses on an Impact Fee Sending Site.

Impact Fee Transfer(s) shall mean the Impact Fee Transfer credit created by a permanent reduction in demand for capital facilities, by type of development and associated facility demand, on an Impact Fee Sending Site. Impact Fee Transfers by facility type may be applied against the City imposed impact fees by facility type due on new Affordable Housing units provided on an Impact Fee Transfer Receiving Site. Impact Fee Transfers shall be calculated based on the reduction in facility capacity demand by facility type as determined by the currently applicable City impact fee schedule.

Low Income Families shall mean families whose incomes are more than 50 percent but do not exceed 80 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

Moderate Income Families means families whose incomes are more than 80 percent but do not exceed 120 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

Rental Affordable Housing shall mean newly constructed single-family or multi-family family residential dwelling units on which City-imposed Impact Fees are due that are leased to and occupied by a low income family or very low income family that fulfills and maintains the relevant criteria established in this Chapter 11A at the commencement of the leasehold and during the duration of the leasehold.

Very Low Income Families shall mean families whose incomes do not exceed 50 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

(Ord. No. 1558-08, <sec> 4, 9-3-08)

Sec. 11A-6. Applicability.

The provisions of this Chapter 11A shall be applicable to the development of Affordable Housing on which City imposed impact fees are collected after the effective date of this Chapter. Where a building permit was issued after February 1, 2007 and prior to the effective date of this Chapter, an executed Deferral Agreement or Impact Fee Transfer Agreement(s), whichever are applicable, shall be accepted by the City as the basis for determination of the amount of City imposed impact fees due.

Sec. 11A-7. Affordable Housing Impact Fee Deferral Program.

- (a) Pursuant to the requirements established in this Section and Chapter 11A, the City shall defer the payment of impact fees due for any new owner-occupied dwelling unit which qualifies as Affordable Housing under this Chapter and which fulfills all other requirements of this Section.

- (b) Any person seeking an Affordable Housing Impact Fee Deferral for proposed residential development shall file with the City Manager an application for deferral prior to receiving a building permit for the proposed development, except as provided in Section 11A-6. The City shall provide application forms to be used by applicants. The application shall, at a minimum, include the following:
- (1) Name and address of the applicant;
 - (2) An up-to-date, complete legal description of the site on which the proposed development is to be located, including the parcel identification number and the street address, if available; and
 - (3) The maximum income level of the applicant owner, or if the applicant owner is the developer or builder, the income level of the household to which the dwelling unit is to be sold.
- (c) If the proposed development meets the requirements for the Affordable Housing Impact Fee Deferral as set forth in this Section, the City Manager shall enter into an Impact Fee Deferral Agreement and is hereby authorized by the Council to execute such Deferral Agreement along with any associated tri-party agreement further defining the repayment obligations of the owner, applicant, builder and/or developer, as applicable. The recorded Impact Fee Deferral Agreement shall be accepted by the City in lieu of payment of the impact fees due pursuant to Chapter 11 of the City Code.
- (d) To qualify for Affordable Housing Impact Fee Deferral, the owner-occupied dwelling unit and owner(s) must fulfill all of the following criteria:
- (1) The dwelling unit must be the homestead of the owner(s) under Section 4, Article X of the State Constitution. The qualifying owner(s) must be the first occupants and the first owner(s), other than the developer, of the newly constructed dwelling unit.
 - (2) The owner(s) or anticipated owner(s) of the dwelling unit must qualify as a very low income family, a low income family or a moderate income family as defined in Section 11A-5 at the time of execution of a Deferral Agreement by the owner(s).
 - (3) The monthly mortgage payment, including taxes and insurance, must not exceed 30 percent of that amount which represents the percentage of median annual gross income for the applicable household category defined in Section 11A-5. If the first institutional mortgage lender is satisfied that the owner(s)/household can afford the mortgage payments in excess of the 30 percent benchmark, the dwelling unit shall be deemed affordable even if the monthly mortgage payment, including taxes and insurance exceeds the 30 percent benchmark.
 - (4) If the application is submitted by a developer prior to construction of the dwelling unit and prior to purchase by a qualified purchaser, the

following additional requirements must be fulfilled:

- a. A written affirmation from the developer/builder to the City must guarantee to the City that the identified Affordable Housing unit(s) will be constructed and will be sold in compliance with the requirements of this Chapter. The affirmation must be in effect no later than the time of application for deferral and continue in effect for at least one year after issuance of a certificate of occupancy, and
 - b. The qualifying purchasers must take ownership of the dwelling unit no later than one year after issuance of a certificate of occupancy and must be the initial occupants and owners, other than the developer, of the dwelling unit. If qualifying purchasers fail to take ownership of the dwelling unit no later than one year after issuance of a certificate of occupancy, the full amount of impact fees that were deferred on the unit shall immediately become due and payable with interest.
 - (5) Without Council approval, no more than 10 outstanding Deferral Agreements are permitted with an individual developer or for any developments that are under common ownership. For purposes of this Subsection, common ownership shall include ownership by the same person, corporation, firm, entity, partnership or unincorporated association, or ownership by different corporations, firms, partnerships, entities or unincorporated associations in which a stockbroker, partner or associate or a member of his family owns an interest in such corporation, firm, partnership, entity or unincorporated association.
- (e) Impact Fee Deferral Agreements.
- (1) The owner of a dwelling unit on which impact fees are deferred under this Chapter shall execute an Impact Fee Deferral Agreement with the City. A separate Impact Fee Deferral Agreement shall be executed for each dwelling unit. Applicants are required to enter into a Deferral Agreement to qualify for impact fee deferral. The Deferral Agreement shall be recorded in the real property records of the County at no cost to the City and shall run with the land. The Deferral Agreement shall include such provisions as are necessary to effectuate the purposes of this Chapter and Section and shall provide for, at a minimum, the following:
 - a. Legal description of the property and the dwelling unit, including the parcel tax identification number and street address.
 - b. The amount of the City imposed impact fees deferred and the obligation that the total amount of deferred impact fees shall be paid in full upon the sale of the unit, upon any breach of the Deferral Agreement by the owner or upon the failure of the owner to continue to qualify under the

provisions of this Section.

- c. The rights and obligations under a Deferral Agreement, including the deferred impact fees, may not be assigned, transferred, credited, devised or otherwise conveyed separate and apart from the subject Affordable Housing dwelling unit and property.
- d. Deferred impact fees shall be a lien on the property which lien shall be recorded. The lien may be foreclosed upon in the event of noncompliance with the requirements of this Section and Chapter or in the event of a breach of the Deferral Agreement by owner. The lien shall terminate upon the recording of a release or satisfaction of lien in the public records of the County. Such release or satisfaction shall be recorded by the City upon payment in full of the deferred impact fees.
- e. In the event of a default of the Agreement by the owner and the default is not cured within 30 days after written notice is provided to the owner, the City may, at its sole option, collect the deferred impact fees in default as provided in this Section or bring a civil action to enforce the agreement or declare that the deferred impact fees are in default and are immediately due and payable. The City shall be entitled to recover all costs and fees, including attorney's fees and costs, incurred by the City in enforcing the Deferral Agreement, plus interest at the maximum statutory rate for judgments calculated on a calendar day basis until paid in full.

(f) Owner Reporting Obligations.

- (1) The impact fees deferred on a dwelling unit shall be a lien on the property until all requirements under this Chapter and the terms of all Deferral Agreements related to that dwelling have been satisfied in full.
- (2) The owner of a dwelling unit on which impact fees have been deferred shall annually submit an affidavit of continued compliance with the requirements of this Chapter and the terms of the applicable Deferral Agreement. The affidavit must be filed no later than 30 days after the anniversary of the date of issuance of the certificate of occupancy on the dwelling unit. A late fee of \$50.00 shall be paid to the City by the owner if the affidavit is not timely filed. If the owner fails to file the affidavit within four months after the anniversary date of issuance of the certificate of occupancy on the dwelling unit, the impact fees deferred shall become immediately due and payable in full and the City may immediately proceed to collect the impact fees due.

(g) Repayment.

- (1) All impact fees deferred at the time of building permit issuance for an owner-occupied dwelling unit shall become due and payable and shall be immediately paid in full to the City upon the occurrence of any of the following events:
 - a. Sale of the dwelling unit; or
 - b. Refinancing of the purchase mortgage or loans secured by senior real property security instruments; or
 - c. Loss of the homestead exemption under Section 4, Article X of the State Constitution; or
 - d. The first occurrence of any sale or transfer of any part of or interest in the affected real property; or
 - e. The failure of the owner to maintain compliance with the requirements of this Chapter and the terms of the applicable Deferral Agreement. However, the noncompliance of the owner with the terms of this Chapter and/or the applicable Deferral Agreement due solely to an increase in the household income over the standards established in this Chapter shall not trigger repayment obligations under this Chapter; or
 - f. The failure of an anticipated purchaser to complete the purchase of a dwelling unit for which a developer affirmation has been accepted by the City.
- (2) Repayment of deferred impact fees shall include any accrued interest. Interest on owner-occupied deferrals shall be computed at the rate of five percent per annum, but in no event shall the total accrued interest exceed 25 percent of the total impact fees deferred on the dwelling unit. Interest on developer deferrals qualified under Section 11A-7(d)(4) shall be computed at the rate of five percent per annum if the developer fails to transfer the dwelling unit to a qualified purchaser within one year of the date of issuance of the certificate of occupancy on the dwelling unit.

(Ord. No. 1558-08, <sec> 5, 9-3-08)

Sec. 11A-8. Affordable Housing Impact Fee Transfer Program.

- (a) Pursuant to the requirements of this Section and Chapter 11A, the City shall allow approved Impact Fee Transfers to be used as payment against City imposed impact fees due on new, owner-occupied dwelling units which qualify as Affordable Housing under this Chapter and which fulfill all other requirements of this section.
- (b) Impact Fee Transfers may be created by permanent reduction of demand for capital facility capacity through the demolition or redevelopment of existing development, excluding non-conforming uses, on one site (hereinafter "Impact Fee Transfer Sending Site" or "Sending Site"). Such Impact Fee

Transfers may be used as payment for City imposed impact fees due on Affordable Housing dwelling units on another site in the City (hereinafter "Impact Fee Transfer Receiving Site" or "Receiving Site").

- (c) Reduction in demand for facility capacity on the Sending Site shall be determined by calculating the capital facility demand generated by previously existing development on the Sending Site, using the type and number of dwelling units or amount and type of development and associated facility demand based on the currently applicable City impact fee schedules, less the facility demand generated by the development proposed for or constructed on the Sending Site, based on the currently applicable City impact fee schedules. The reduction in demand for facility capacity on the Sending Site shall be calculated separately for each type of facility or impact fee imposed by the City. The Applicant for participation in the Impact Fee Transfer Program shall bear the burden of providing adequate documentation needed for the City to determine any reduction in the demand for facility capacity of a Sending Site and any other information needed by the City in relation to this Program.
- (d) Notice of Impact Fee Transfer approved for a Sending Site shall be recorded in the real property records of the County by recording the executed Impact Fee Transfer Agreement(s) applicable to the Site. Any Impact Fee Transfer so recorded shall not be available for use on the Sending Site and may be used only for payment of impact fees due on Affordable Housing on a Receiving Site approved under this program. Any subsequent increase in demand for facility capacity on the Sending Site will require payment of applicable City imposed impact fees.
- (e) The Impact Fee Transfers from multiple Sending Sites may be aggregated for use in the provision of Affordable Housing on one or more Receiving Sites.
- (f) Applications for participation in the Impact Fee Transfer Program shall contain the following information submitted to the City Manager or his designee:
 - (1) A letter expressing intent to enter into Impact Fee Transfer agreements on the Sending Site(s) and the Receiving Site(s) to be recorded in the property records of the County;
 - (2) Legal Descriptions, including the parcel tax identification number and street address and proof of ownership of the Sending Site(s) and the Receiving Site(s) by the Applicant or Co-applicant(s);
 - (3) Documentation of the type and gross square footage of nonresidential development or number of dwelling units by type that previously existed on the Sending Site;
 - (4) Documentation of the proposed or existing development on the Sending Site that results in a reduced demand for public facilities compared to the previously existing development;
 - (5) Documentation of the number of Affordable Housing dwelling units to be constructed on the Receiving Site(s), including all data needed to

verify that the proposed units qualify as Affordable Housing under this Chapter; and

- (6) Any additional information needed by the City to adequately confirm and calculate the reduction in demand for facilities, identify the Sending and Receiving Sites, verify ownership and any other issues related to the Impact Fee Transfer Program.
- (e) Upon verification that the proposed housing units qualify as Affordable Housing under this Chapter and determination by the City of the amount of Impact Fee Transfer available from the Sending Site(s), the City and Applicant(s) shall enter into an Impact Fee Transfer Agreement for each Sending Site and each Receiving Site. All Impact Fee Transfer Agreements shall be approved by the City Council and executed by the City, the Applicant and the owner(s) of the Sites, if different from the Applicant. Executed Impact Fee Transfer Agreements shall be recorded in the property records of the County and a copy of each such Agreement shall be kept on file in the City as part of the administration records for the City's impact fees.
- (f) Failure of the Applicant(s) to fulfill the conditions and requirements of this Section and all provisions of the applicable Impact Fee Transfer Agreements, whether for the Sending or Receiving Sites, shall cause all City imposed impact fees otherwise due to become immediately due and payable in full.

Sec. 11A-9. Rental Affordable Housing Impact Fee Installment Payment Program.

- (a) Pursuant to the requirements established in this Section and Chapter 11A, the City shall defer the payment of impact fees due for any new rental dwelling unit which qualifies as Rental Affordable Housing under this Chapter and which fulfills all other requirements of this Section. The Council shall by Resolution establish a Rental Affordable Housing Impact Fee Installment Payment schedule, including the portion of impact fees to be paid at the time of building permit issuance, at the time of issuance of certificate of occupancy and remaining payments, including accrued interest, over a period of five (5) years from the date of issuance of certificate of occupancy.
- (b) Any person seeking Rental Affordable Housing Impact Fee Installment Payment under this Section for proposed residential development shall file with the City Manager an application for Rental Affordable Housing Installment Payment prior to receiving a building permit for the proposed development, except as provided by Section 11A-6. The City shall provide application forms to be used by applicants. The application shall, at a minimum, include the following:
 - (1) Name and address of the applicant and owner/lessor;
 - (2) An up-to-date, complete legal description of the site on which the proposed development is to be located, including the parcel

identification number and the street address, if available; and

- (3) The rental limits to be imposed on the Rental Affordable Housing Unit(s) which shall not exceed the rental limits established by the Florida Housing Finance Corporation for rents adjusted to bedroom size in projects assisted by the Florida Housing Finance Corporation or any other local, state or federal agency, based on unit size.
- (c) If the proposed development meets the requirements for the Rental Affordable Housing Impact Fee Installment Payment as set forth in this Section, the City Manager shall enter into an Impact Fee Installment Payment Agreement for each qualifying building and is hereby authorized by the Council to execute such Installment Payment Agreements along with any associated tri-party agreement further defining the repayment obligations of the owner/lessor, applicant, builder and/or developer, as applicable. The recorded Impact Fee Installment Payment Agreement shall be accepted by the City in lieu of payment of the total impact fees due at the time of building permit issuance pursuant to Chapter 11 of the City Code.
 - (d) To qualify for Rental Affordable Housing Impact Fee Installment Payment, the Rental Affordable Housing unit(s) and lessee(s) must fulfill all of the following criteria:
 - (1) The household renting/leasing the rental unit, including both single-family and multi-family units, must have a low or very low income level, at the commencement of the leasehold and during the duration thereof, as those terms are defined in this Chapter.
 - (2) The rental unit must be and must remain the household's permanent residence. The head of the household must be at least 18 years of age and must be either a citizen of the United States or a legal alien who permanently resides in the United States.
 - (3) In no instance shall rental limits exceed the rental limits established by the Florida Housing Finance Corporation for rents adjusted to bedroom size in projects assisted by the Florida Housing Finance Corporation, or any other local, state or federal agency, based on unit size.
 - (4) Without Council approval, no more than 20 outstanding Installment Payment Agreements are permitted with an individual owner/lessor or for any Rental Affordable Housing that is under common ownership. For purposes of this subsection, common ownership shall include ownership by the same person, corporation, firm, entity, partnership or unincorporated association, or ownership by different corporations, firms, partnerships, entities or unincorporated associations in which a stockbroker, partner or associate or a member of his family owns an interest in such corporation, firm, partnership, entity or unincorporated association.

(e) Impact Fee Installment Payment Agreements.

- (1) The owner/lessor of Rental Affordable Housing Unit(s) on which impact fees qualify for installment payments under this Chapter shall execute an Impact Fee Installment Payment Agreement with the City. A separate Impact Fee Installment Payment Agreement shall be executed for each building. Applicants are required to enter into an Installment Payment Agreement to qualify for installment payments of the impact fees due. The installment Payment Agreement shall be recorded in the real property records of the County at no cost to the City and shall run with the land. The Installment Payment Agreement shall include such provisions as are necessary to effectuate the purposes of this Chapter and Section and shall provide for, at a minimum, the following:
 - a. Legal description of the property and the dwelling unit, including the parcel tax identification number and street address.
 - b. The amount of the City-imposed impact fees due on the building, the installment payment schedule and the obligation that the total amount of unpaid impact fees shall be paid in full upon any breach of the Installment Payment Agreement by the owner/lessor or upon the failure of the owner/lessor to continue to qualify under the provisions of this Section.
 - c. The rights and obligations under an Installment Payment Agreement may not be assigned, transferred, credited, devised or otherwise conveyed separate and apart from the subject Rental Affordable Housing units and property.
 - d. Unpaid impact fees under an Installment Payment Agreement shall be a lien on the property which lien shall be recorded. The lien may be foreclosed upon in the event of noncompliance with the requirements of this Section and Chapter or in the event of a breach of the Installment Payment Agreement by owner. The lien shall terminate upon the recording of a release or satisfaction of lien in the public records of the County. Such release or satisfaction shall be recorded by the City upon payment in full of the deferred impact fees.
 - e. In the event of a default of the Agreement by the owner and the default is not cured within 30 days after written notice is provided to the owner, the City may, at its sole option, collect the deferred impact fees in default as provided in this Section or bring a civil action to enforce the agreement or declare that the deferred impact fees are in default and are immediately due and payable. The City shall be entitled to recover all costs and fees, including attorney's fees and costs, incurred by the City in enforcing the Installment Payment Agreement, plus interest at the maximum statutory rate for judgments

calculated on a calendar day basis until paid in full.

(f) Owner Obligations.

- (1) The impact fees due on Rental Affordable Housing units under an Installment Payment Plan shall be a lien on the property until all requirements under this Chapter and the terms of the Installment Payment Agreement(s) related to that qualifying building have been satisfied in full.
- (2) The owner/lessor of Rental Affordable Housing unit(s) on which impact fees have qualified for installment payment shall annually submit an affidavit of continued compliance with the requirements of this Chapter and the terms of the applicable Installment Payment Agreement. The affidavit must be filed no later than 30 days after the anniversary of the date of issuance of the certificate of occupancy on the building containing the Rental Affordable Housing unit(s). A late fee of \$50.00 shall be paid to the City by the owner if the affidavit is not timely filed. If the owner fails to file the affidavit within four months after the anniversary date of issuance of the certificate of occupancy on the building containing the Rental Affordable Housing unit(s), all unpaid impact fees shall become immediately due and payable in full and the City may immediately proceed to collect the remaining impact fees due.

(g) Repayment.

- (1) All unpaid impact fees at the time of building permit issuance for a Rental Affordable Housing Unit shall become due and payable and shall be immediately paid in full to the City upon the occurrence of any of the failure of the owner to maintain compliance with the requirements of this Chapter and the terms of the applicable Installment Payment Agreement.
- (2) Payment of impact fees on an installment payment schedule shall include any accrued interest. Interest on installment payments shall be computed at the rate of five percent per annum, but in no event shall the total accrued interest exceed 25 percent of the total impact fees due on the Rental Housing Units(s).

(Ord. No. 1558-08, <sec> 6, 9-3-08; Ord. No. 1678-11, <sec> 5, 4-20-11)

Sec. 11A-10. Collection of Impact Fees in the Event of Default under this Chapter.

Whenever the City determines that there is a default under an Impact Fee Deferral Agreement, an Impact Fee Installment Payment Agreement, or an Impact Fee Transfer Agreement or the occurrence of any other condition causing impact fees to be due and payable under this Chapter, the impact fees due shall be deemed to be delinquent. The City shall proceed to collect the delinquent impact fees due as follows:

- (a) The City shall serve, by certified mail, return receipt requested or by any other then lawful means of delivery, a “notice of impact fees due statement” upon the applicant at the property address set forth in the relevant Agreement and to the owner at such address appearing on the most recent records maintained by the property appraiser of the County. Service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or by any other evidence of the date that the “notice” was received by the addressee. The “notice of impact fees due statement” shall contain a description of the property, the conditions giving rise to the impact fees being due and shall advise the applicant and the owner as follows:
- (1) The amounts due including the impact fees and any accrued interest pursuant to an Impact Fee Deferral Agreement or an Impact Fee Installment Payment Agreement;
 - (2) The date that the impact fees became due and that as of date the unpaid impact fees became subject to a delinquency fee and that penalty interest began to accrue on that date and that such penalty interest will continue to accrue thereafter until all amounts due are paid in full;
 - (3) That in the event the impact fee and the delinquency fee are paid in full within 30 days after receipt of the “notice”, the delinquency fee and all penalty interest that would have otherwise accrued will be waived; however, interest accrued under an Impact Fee Deferral Agreement or under an Impact Fee Installment Payment Agreement will not be waived;
 - (4) That in the event the impact fees are not paid in full within 30 days after receipt of the “notice”, a lien against the property for which the building permit was secured may be recorded in the official records book of the County for all amounts then due after approval by City Council.
- (b) Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fees due, including interest accrued pursuant to an Impact Fee Deferral Agreement or an Impact Fee Installment Payment Agreement shall be assessed. Once delinquent, the total impact fees due, plus the delinquency fee, shall bear interest at the then applicable statutory rate for final judgments calculated on a calendar day basis, until paid in full.
- (c) Should the impact fee not be paid promptly, the City shall serve, by certified mail return receipt requested or by any other then lawful means of delivery a “Notice of lien” upon the delinquent applicant, if the building is under construction at the address indicated in the application for the building permit and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the County. The notice of lien shall notify the delinquent applicant and delinquent owner that due to their failure to pay the impact fee, the City may file a claim of lien with the Clerk of the Circuit Court.
- (d) In the event the recipient of a notice of delinquency or claim of lien disputes any material aspect of either notice, the applicant, upon paying the impact fee

amounts set forth in the respective notice, may file a written appeal petition with the Council not later than 30 days after receipt of such notice. In reviewing the decision, the Council shall use the standards established herein. The appeal petition must advise the Council of all disputed issues regarding the amount due and shall explain the precise basis the applicant asserts that the notice is incorrect.

- (e) If the total impact fees due have not been received by the City within 30 days of receipt of the notice by the owner, the City Attorney may then, regardless of the filing of any appeal petition, request the Council to approve, at a regularly scheduled public meeting, the filing of a claim of lien with the Clerk of the Circuit Court and recording same in the official records of the County. The recorded claim of lien shall contain the legal description of the property, the amount of the delinquent impact fee, plus the delinquency fee and interest and the date the impact fee became due. Once recorded, the claim of lien shall constitute a lien against the property described therein. The City Attorney may proceed expeditiously to collect, foreclose or otherwise enforce said lien.
- (f) After the expiration of the 30 days from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. ch. 173, as amended, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.
- (g) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the lien of all State, County, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided herein.
- (h) The foregoing paragraphs of this Section notwithstanding, all impact fees not paid to the City in full when due shall automatically become "delinquent". Moreover, when any impact fees become delinquent anywhere throughout the unified whole of a respective development, the City is authorized to withhold every then unissued building permit(s) or other City approvals applied for by, or on behalf of, the landowner or the developer and in addition apply any and all of the civil penalties and remedies set forth in the enforcement division of the City land development code until all such delinquent impact fees have been paid to the City in full.
- (i) The collection and enforcement procedures set forth in this Section shall be cumulative with, supplemental to and in addition to, all other applicable procedures provided in any other ordinances or administrative regulations of the City or any applicable law or administrative regulation of the State of Florida. Failure of the City to follow the procedure set forth in this Section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the City or any applicable law or administrative regulation of the State of Florida.

(Ord. No. 1558-08, <sec> 7, 9-3-08)

Sec. 11A-11. Reporting on and suspension of Affordable Housing Impact Fee Incentives.

Information on the number of Affordable Housing Impact Fee Deferrals Agreements, the number of Impact Fee Installment Payment Agreements and the number and amount of Impact Fee Transfers approved each year shall be included in the Annual Report on the City's impact fees required in Chapter 11. Any additional information on the programs that will assist the Council in evaluating the effectiveness of the affordable housing incentives established in this Chapter and the effect, if any, on the provision of capital facilities should be included in the Annual Report. Should the Council determine that the Affordable Housing Incentives Program is significantly reducing the City's impact fee revenue and impairing the provision of capital facilities under the City's capital improvements program, the Council may, by resolution, suspend one or both of the Affordable Housing Incentive Programs. The suspension shall become effective ninety days after adoption of such resolution. Applications submitted prior to or on the date of suspension of the program(s) will be processed by the City. Applications submitted after the suspension date will not be accepted by the City.

(Ord. No. 1558-08, <sec> 8, 9-3-08)