

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-339

A RESOLUTION ESTABLISHING A SUBSIDIZED HOUSING IMPACT FEE DEFERRAL PROGRAM; PROVIDING FINDINGS, INTENT, AUTHORITY AND DEFINITIONS; PROVIDING FOR APPLICATION PROCEDURES; PROVIDING FOR REPORTING; PROVIDING FOR RECORDING OF RESTRICTIVE COVENANTS AND LIEN TO INSURE PAYMENT OF DEFERRED IMPACT FEES; PROVIDING FOR REPORTING ON AND SUSPENSION OF IMPACT FEE INCENTIVES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Coral Gables, Florida (hereinafter "City") is experiencing development and redevelopment which generates a need for additional public facility capacity and capital equipment; and

WHEREAS, the City Commission of the City of Coral Gables (hereinafter "Commission") determined that impact fees are a needed mechanism to help the City address the cost of providing public facilities needed to accommodate new development; and

WHEREAS, the Commission has also determined that the provision of qualified units of owner-occupied subsidized housing within the City fulfills a public purpose and will benefit the public health, safety and welfare; and

WHEREAS, in balancing the need for new development to contribute to funding public facilities needed to accommodate new development and the benefits to the public from additional subsidized owner-occupied housing in the City, the Commission has determined that it is in the public interest to encourage the provision of such housing by providing the subsidized housing impact fee incentives established herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. In the creation of the Subsidized Housing Impact Fee Deferral Program, the Commission 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 Sections 163.3161 and 166.04151 et seq., F.S., as amended. Section 166.04151, F.S., as amended, specifically authorizes municipalities to adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing. The Commission is authorized under Section 2-2104 of the Code of City of Coral Gables (hereinafter “City Code”) to adopt certain impact fee incentives by ordinance or resolution. In the adoption of this Resolution, it is the intent of the Commission to balance the need for funding of additional public facilities with the public benefits of additional subsidized housing units within the City.

SECTION 3. Definitions. As applied in this Resolution, the following words and terms shall have the following meaning, unless another meaning is clearly intended:

City-imposed Impact Fees shall mean the impact fees imposed by the City of Coral Gables pursuant to Chapter 2, Article IX of the City Code. Water and sewer impact fees, connection fees or capacity fees imposed by the City are excluded from the Subsidized Housing Incentives Program.

Subsidized Housing shall mean newly constructed, owner-occupied single-family dwelling units that are intended to be and are owned and occupied by families meeting the HUD federal guidelines for affordable housing as determined by and administered by Miami-Dade County and which units are subsidized, through funding or provision of land, by a governmental entity other than the City. The application of this impact fee incentive program is further restricted to units also fulfilling the following criteria: 1) households whose total annual adjusted gross income, at the time of execution of the Subsidized Housing Deferral and Lien Agreement, is 80% percent or less than the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within Miami-Dade County, whichever is greater as defined by HUD, and 2) new single-family, detached, owner-occupied dwelling units developed by a non-profit organization or entity. The provisions of this Resolution shall apply only to Subsidized Housing dwelling units fulfilling all of the criteria in this Resolution and on which City-imposed Impact Fees are due.

SECTION 4. Subsidized Housing Impact Fee Deferral Program.

(a) Pursuant to the requirements established in this Resolution, the City shall defer the payment of impact fees due for any new owner-occupied dwelling unit which qualifies as Subsidized Housing as defined in this Resolution and which fulfills all other requirements of this Resolution. The deferral period shall be twenty (20) years. If compliance with this Resolution and the terms of the applicable Subsidized Housing Deferral and Lien Agreement have been maintained continuously for the entire deferral period, the impact fees due at the end of that period may be waived or forgiven by the Commission. Otherwise, any default of the terms of this Resolution or applicable Deferral Agreement shall cause the impact fees due to be immediately due and payable, and the City may proceed to collect the impact fees due as provided in this Resolution.

(b) Any person seeking an Subsidized Housing Impact Fee Deferral for proposed residential development shall file with the City Planning Department an application for deferral prior to receiving a building permit for the proposed development, except as previously authorized by the Commission pursuant to Resolution 2009-197. 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;
- (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; and
- (4) Affidavit that the dwelling unit is/shall be the homestead of the applicant owner/occupant.

(c) If the proposed development meets the requirements for the Subsidized Housing Impact Fee Deferral as set forth in this Resolution, the City Manager shall enter into an Impact Fee Deferral and Lien Agreement and is hereby authorized by the Commission to execute such Deferral and Lien Agreements 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 and Lien Agreement shall be accepted by the City in lieu of payment of the impact fees due pursuant to Chapter 2 of the City Code.

(d) To qualify for Subsidized Housing Impact Fee Deferral, the owner-occupied dwelling unit and owner(s) must fulfill all of the following criteria:

(1) The dwelling unit shall be the homestead of the owner(s) under Section 4, Article X of the State Constitution and shall remain the homestead of the owner(s) throughout the deferral period. The qualifying owner(s) must be the first occupants and the first owner(s), other than the developer, of the newly constructed dwelling unit and must maintain the homestead status for the duration of the deferral. To maintain qualification for deferral, all subsequent purchasers of the qualified dwelling unit must fulfill all criteria under this Resolution, except subsequent purchasers are not required to be the first occupant(s).

(2) The owner(s) or anticipated owner(s) of the dwelling unit must meet the HUD federal guidelines for affordable housing as determined by and administered by Miami-Dade County at the time of execution of a Deferral Agreement by the owner(s). Any sale or refinancing of the dwelling unit during the deferral term must be within the HUD federal guidelines for affordable housing as determined by and administered by Miami-Dade County or the deferred impact fees shall become due and payable.

(3) The dwelling unit must be subsidized, by funding or provision of land, by a governmental entity other than the City.

(4) If the application is submitted by a developer prior to construction of the dwelling unit and prior to purchase by a qualifying 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 Subsidized Housing unit(s) will be constructed and will be sold in compliance with the requirements of this Resolution. The affirmation must be in effect no later than the time of application for deferral and continue in effect for at least six (6) months after issuance of a certificate of occupancy, and

b. The qualifying purchasers must take ownership of the dwelling unit no later than six (6) months 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 six (6) months 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 Commission 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 Resolution, 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) Subsidized Housing Impact Fee Deferral and Lien Agreements.

(1) The owner of a dwelling unit on which impact fees are deferred under this Resolution shall execute a Subsidized Housing Impact Fee Deferral and Lien Agreement with the City. A separate Deferral and Lien Agreement shall be executed for each dwelling unit. Applicants are required to enter into a Deferral and Lien Agreement to qualify for impact fee deferral. The Deferral and Lien Agreement shall be recorded in the real property records of the County at no cost to the City and shall run with the land and be binding on all subsequent purchasers. The Deferral and Lien Agreement shall include such provisions as are necessary to effectuate the purposes of this Resolution 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, including any accrued interest, shall be paid in full upon any breach of the Deferral and Lien Agreement by the owner or upon the failure of the owner to continue to qualify under the provisions of this Resolution.
- c. The rights and obligations under a Deferral and Lien Agreement, including the deferred impact fees, may not be assigned, transferred, credited, devised or otherwise conveyed separate and apart from the subject Subsidized 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 Resolution or in the event of a breach of the Deferral and Lien 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 Deferral and Lien 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 Resolution 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 Resolution and the terms of all Deferral Agreements related to that dwelling unit have been satisfied in full.

(2) Upon receipt of a written request from the City, the owner of a dwelling unit on which impact fees have been deferred shall annually submit a written affirmation of continued compliance with the requirements of this Resolution and the terms of the applicable Deferral and Lien Agreement. The written affirmation must be filed no later than 45 days after mailing of the written request by the City. 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 written affirmation within four months after the mailing date of the request from the City, 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 or Default.

(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 or refinancing of the dwelling unit at a price that removes the unit from the classification of affordable housing under the HUD federal guidelines for affordable housing, as amended from time to time, as determined by and administered by Miami-Dade County; or

b. Loss of the homestead exemption under Section 4, Article X of the State Constitution; or

c. Any rental of the dwelling unit, regardless of approval of any rental by Miami-Dade County; or

d. The failure of the owner to maintain compliance with the requirements of this Resolution and the terms of the applicable Deferral and Lien Agreement; or

e. 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; or

f. The end of the twenty-year (20) period from the date of recording of the Deferral and Lien Agreement if the City Commission has not determined that the

deferred impact fees are waived or forgiven.

(2) In the event of a default under this Resolution and the terms of the applicable Deferral and Lien Agreement, 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 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 six (6) months of the date of issuance of the certificate of occupancy on the dwelling unit.

SECTION 5. Collection of Impact Fees in the Event of Default under this Resolution or a Deferral and Lien Agreement. Whenever the City determines that there is a default under a Deferral and Lien Agreement or the occurrence of any other condition causing impact fees to be due and payable under this Resolution, 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;

(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 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 the City Commission.

(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, 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 Commission not later than 30 days after receipt of such notice. In reviewing the decision, the Commission shall use the standards established herein. The appeal petition must advise the Commission 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 Commission 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 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 subsequently 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.

SECTION 6. Reporting on and suspension of Subsidized Housing Impact Fee Incentives.

Information on the number of Subsidized Housing Impact Fee Deferrals approved each year shall be included in the Annual Report on the City's impact fees required in Chapter 2. Any additional information on the program that will assist the Commission in evaluating the effectiveness of the subsidized housing incentives established in this Resolution and the effect, if any, on the provision of capital facilities should be included in the Annual Report. Should the Commission determine that the Subsidized 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 Commission may, by resolution, suspend the Subsidized Housing Impact Fee Incentive Program. 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.

SECTION 7. The provisions of this resolution shall be liberally construed to effectively carry out its purposes in the interest of public health, safety, welfare and convenience

SECTION 8. If any Section, part of Section, paragraph, clause, phrase or word of this Resolution is declared invalid, the remaining provisions of this Resolution shall not be affected.

SECTION 9. This Resolution shall be effective immediately upon the date of its passage and adoption in accordance with applicable laws.

PASSED AND ADOPTED THIS FIFTEENTH DAY OF DECEMBER A.D., 2009.

(Moved: Kerdyk / Seconded: Cabrera)

(Yeas: Cabrera, Kerdyk, Withers, Anderson, Slesnick)

(Unanimous: 5-0 Vote)


(Agenda Item: C-14)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER L. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY