

ARTICLE IX. - IMPACT FEES⁽⁷⁾

Footnotes:

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Editor's note—Ord. No. 2007-27, § 2, adopted August 28, 2007, set out provisions intended for use as §§ 60-1—60-19. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as Art. IX, §§ 2-2101—2-2119, to read as set out herein.

Sec. 2-2101. - Short title.

This article shall be known and cited as the "Coral Gables Development Impact Fee Ordinance."

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2102. - Findings.

The city commission of Coral Gables, Florida (hereinafter "commission") hereby finds and declares that:

- (a) Coral Gables, 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.
- (b) The Comprehensive Plan for Coral Gables, as adopted and amended by the commission, and census and population studies predict that growth will continue and will create increased demand for public facilities needed to accommodate new development.
- (c) The city'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 fire protection and emergency services, law enforcement, general government and parks and open space which are essential responsibilities under the police power authority of the city.
- (d) Impact fees are a reasonable method of ensuring that new development pays a proportionate share of the capital costs of public facilities needed to accommodate new development. It is the intent of this article that new development in the city pay a proportionate share of the average costs related to the provision of public facilities needed to accommodate the demand generated by new development.
- (e) Funds collected pursuant to this article 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 article. Funds collected pursuant to this article 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 advertised meetings of the city commission, the commission considered 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, and the need to adopt impact fees to help provide additional public facility capacity and capital equipment needed due to new development.

- (g) The commission hereby finds and declares that all new development, as defined herein, within the city generates an increased demand for system improvements for police, fire and EMS, and general government facilities, as defined herein, and that all new residential development within the city also generates an increased demand for park facilities and open space. The commission 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 commission hereby finds and declares that the impact fees imposed pursuant to this article comply with the requirements of F.S. § 163.31801. Specifically, the requirements of F.S. § 163.31801, 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 commission will reflect actual costs to the city for the creation, administration and maintenance of the impact fee system, notice was provided no less than 90 days before the effective date of this article, and audits of the city performed pursuant to F.S. § 218.39 will include an affidavit from the chief financial officer of the city stating that the city has complied with F.S. § 163.31801.
- (i) The commission 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 impact fees is critical to the city's ability to provide such facilities. The commission hereby finds and declares that the impact fees imposed herein are needed 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 commission deems it essential to adopt this article as hereinafter set forth.
- (j) During the adoption process for Ordinance No. 2007-27, the issue of determining appropriate impact fees for new development on the campus of the University of Miami (UM) was discussed and considered by the commission.
- (k) Generally available technical data commonly used in the calculation of impact fees was not suitable or appropriate for use in calculating impact fees applicable to academic related new development on the UM campus.
- (l) The commission directed that, if appropriate technical data could be produced by UM to support the calculation of impact fees for academic related new development on the UM campus, the city's staff and consultants should develop such impact fees for consideration by the commission.
- (m) City staff and consultants have worked extensively with staff and consultants of UM to develop impact fees that reflect unique characteristics of academic related new development ("Type 1 facilities") on the UM campus, including for example the use and occupancy of proposed academic structures and student housing, as well as the capital facilities provided by UM that substitute for capital facilities that would otherwise be provided by the city, including for example certain police facilities and equipment and recreational facilities.
- (n) The commission has considered the information and recommendations presented in "Methodology and Calculation of City of Coral Gables Impact Fees for the University of Miami" by TischlerBise, Fiscal, Economic & Planning Consultants, dated August 25, 2008, and comments from the public and other interested parties.
- (o) The commission has determined that the proposed development impact fees applicable to academic related new development, termed "Type 1 facilities", on the UM campus are based on a rational nexus between the demand for public facilities generated by such new development and

the impact fees to be imposed on such new development. Therefore, the commission has determined that it is reasonable, appropriate, and in the public interest to adopt the schedule of impact fees applicable to certain new development on the UM campus.

- (p) The commission has determined that the imposition of the full burden of impact fees at the time of certificate of occupancy for certain development that fulfills a public purpose may impede such development.
- (q) The commission has determined that certain type of development, to be defined in a separate resolution or ordinance, fulfill a public purpose and may be encouraged through impact fee incentives, including the deferral or waiver of impact fees.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009; Ord. No. 2009-52, 11-17-2009)

Sec. 2-2103. - Intent.

- (a) This article is intended to require that new development help address the need for capital facility capacity needed to accommodate the demand generated by new development. 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 article 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 article are based upon the data and calculation methodology incorporated in the "Impact Fee Report for the City of Coral Gables, Florida" by TischlerBise, Fiscal, Economic & Planning Consultants, as revised August 17, 2007 (hereinafter "technical report") and in the "Methodology and Calculation of City of Coral Gables Impact Fees for the University of Miami" dated August 25, 2008 prepared by TischlerBise (hereinafter "UM technical report").

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009)

Sec. 2-2104. - Authority.

In the creation of the impact fees, 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, F.S. ch. 166, 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, F.S. § 163.3202(3), encourages the use of innovative land development regulations, including impact fees, and F.S. § 166.04151 specifically authorizes municipalities to adopt and maintain if effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing. The commission may, by separate resolution or ordinance, provide incentives for development that is determined by the commission to fulfill a public purpose through the deferral or waiver of payment of impact fees imposed under this article. The provisions of this article shall not be construed to limit the scope of the city's power necessary to accomplish these purposes.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-52, § 3, 11-17-2009)

Sec. 2-2105. - Definitions.

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

Academic buildings shall mean those buildings located on the UM campus that directly provide space for academic related activities, including for example teaching/lecture space, student laboratory facilities, and faculty offices.

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 article, or shall mean the property owner, or duly designated agent of the property owner, of land identified in a credit agreement pursuant to section 2-2112(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 hotel, motel or other lodging, with or without cooking facilities, to condominium or other residential use. The term "building permit," as used in this article, shall be deemed to include a mobile home installation permit issued pursuant to the city building code or any equivalent permit or approval.

Capital improvements program (CIP) shall mean the five-year schedule of capital improvements adopted by the city annually as 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 have a minimum total cost of \$10,000.00 and have a minimum useful life of five years.

City commission or commission shall mean the City Commission of Coral Gables, Florida.

Collecting agency shall mean the city department or official authorized to issue building permits.

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

Demand unit shall mean the unit of public facility demand associated with various land uses and types of new development as identified in the technical report and used to calculate the impact fees listed for each type of new development in the impact fee schedules in section 2-2109 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.

Faculty/staff housing shall mean residential development located within the UM campus housing UM faculty or staff. UM impact fees imposed on faculty/staff housing shall be determined based on the number of dwelling units in the new development.

Fire and EMS system improvement means system improvements 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.

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 F.S. § 228.056.

Gross floor area (gfa) shall mean the total square footage of a 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.

Multi-family residential development shall mean residential development consisting of a structure containing one attached dwelling unit or two or more dwelling units. Multi-family residential development is grouped into the following categories for the imposition of impact fees: low-rise, mid-rise and high-rise.

- (1) *Low-rise residential development* shall mean multi-family residential development consisting of a structure containing one attached dwelling unit, two dwelling units (duplexes), 3—4 dwelling units, 5—9 dwelling units or 10—19 dwelling units.
- (2) *Mid-rise residential development* shall mean multi-family residential development consisting of a structure containing 20—49 dwelling units.
- (3) *High-rise residential development* shall mean multi-family residential development consisting of a structure containing 50 or more dwelling units.

New development shall mean the carrying out of any building activity or the making of any material change in the use of a structure or land that requires the issuance of a building permit, as defined in this article, 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, and commercial uses, and includes those uses specified in the ITE trip generation manual under Land Use Code Series 100, 300, 400, 500, 600, 700, 800, and 900.

Parks system improvement means land, capital improvements, capital facilities and capital equipment that add capacity to the city park system, including parks with city-wide service areas and associated improvements as well as open space 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 development of a structure or structures solely dedicated to the housing of a person or persons to live, cook and/or sleep within on a permanent basis, as either owner, renter or lessee provided, however, that adult congregate living facilities, retirement homes, nursing homes and other 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 shall be considered to be nonresidential development as defined herein.

Service charge shall mean a charge that, as established by resolution of the commission, 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. The service charge shall be reviewed as part of the annual review provided for in section 2-2110 or at such other times as deemed necessary based upon information submitted by the city manager. The service charge is in addition to the impact fee and shall be payable at the time of building permit issuance. The service charge shall be 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 establishing, administering, updating, 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.

Student housing shall mean residential development located on the UM campus housing UM students. UM impact fees imposed on student housing shall be determined based on the number of beds or students to be housed in the new development.

System improvements shall mean capital improvements projects, as defined in this article, that provide additional capacity needed 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 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 may be considered part of the cost of a 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 "Impact Fee Report for the City of Coral Gables" by TischlerBise, Fiscal, Economic & Planning Consultants, dated August 17, 2007. 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.

Type 1 facilities shall mean those buildings that directly serve and support the UM student population, staff and faculty as identified in the "2007 Regional Traffic Study and Concurrency Analysis" for UM prepared by Keith and Schnars, P.A.

Type 1-2 facilities shall mean those buildings located on the UM campus that include a combination of Type 1 and Type 2 activities as identified in the "2007 Regional Traffic Study and Concurrency Analysis" for UM prepared by Keith and Schnars, P.A. The impact fees due on Type 1-2 facilities shall be determined by separately calculating the impact fees due for each portion of the building by its designated use.

Type 2 facilities shall mean those buildings located on the UM campus that generate activity not directly related to the UM student population as identified in the "2007 Regional Traffic Study and Concurrency Analysis" for UM prepared by Keith and Schnars, P.A.

UM technical report or technical report—UM campus impact fees shall mean the "Methodology and Calculation of City of Coral Gables Impact Fees for the University of Miami" dated August 25, 2008 prepared by TischlerBise, Inc. The UM technical report is adopted by reference and is incorporated herein as if set forth in its entirety. The UM technical report shall be available from the city clerk.

University of Miami campus or UM campus shall mean that area within the University of Miami Campus Area Development (UMCAD) zoning designation/boundary as shown on the Official City of Coral Gables Zoning Map as may be amended from time to time in the Coral Gables Zoning Code.

University of Miami campus area development plan or UMCAD shall mean the University of Miami Campus Development (UMCAD) as defined in the Official City of Coral Gables Zoning Code and Map.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009)

Sec. 2-2106. - Applicability.

- (a) This article shall be uniformly applicable to all new development as defined in this article, and the appropriate impact fee, and applicable service charge, shall be collected prior to issuance of a building permit, as defined in this article, 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 in the number of residential dwelling units for residential structures 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 use and size of the previously existing building or structure for determination by the city of the net increase 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 except as provided under section 2-2112(c) of this article. Impact fees due on new development may be adjusted based on existing or demolished structures as provided in subsections (b) and (c) of this section.
- (b) Where this article 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 the number of residential dwelling units for a 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 structure and use to the impact fees calculated for the proposed structure and use on the same lot or parcel as the prior structure. The applicant has the burden of submitting satisfactory documentation to the city proving the use and size of the previously existing structure for use by the city in determining the net increase for calculation of impact fees due.
- (c) Upon a request by the applicant for new development in an approved planned area development or on the UM campus, the city shall determine the net increase in demand for public facilities by considering structures demolished on land within the approved planned area development or the UM campus and shall not be restricted to the same lot or parcel. The city shall track the use and allocation of such demolition credits.
- (d) Notwithstanding subsections (a) or (b) above, this article shall not be applicable to building permits issued by the city prior to 8:00 a.m. on September 10, 2007, when the applicant proceeds to issuance of certificate of occupancy without invalidation, suspension or abandonment of the corresponding building permit.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009; Ord. No. 2015-17, § 3, 6-16-2015)

Sec. 2-2107. - Establishment of impact fee districts.

In furtherance of the implementation of this article, the commission hereby establishes the following benefit districts for the identified impact fees:

- (a) Police impact fee benefit district which boundary is identical with the boundary of the city, as may be adjusted from time to time;
- (b) Fire and EMS impact fee benefit district which boundary is identical with the boundary of the city, as may be adjusted from time to time;

- (c) General government impact fee benefit district which boundary is identical with the boundary of the city, as may be adjusted from time to time; and
- (d) Park impact fee benefit district which boundary is identical with the boundary of the city, as may be adjusted from time to time.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2108. - 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 imposed by this article, and applicable service charge if established by resolution of the commission. 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.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2109. - Calculation of impact fee and impact fee schedules.

- (a) The city shall calculate the impact fees due under this article 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 dwelling units for residential uses and faculty/staff housing, beds or students for student housing, gross square footage of floor area for nonresidential uses and academic buildings, 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 the fee schedule as officially adopted by the city commission. The total impact fees due shall be the sum of the amounts calculated for each applicable impact fee in the fee schedule.
 - (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 building director, 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 2-2112 of this article. 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. When multiple buildings are included in a building permit application, the impact fees shall be calculated individually for each building 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 commission after a timely appeal, the impact fees due shall be calculated based on the petition determination or commission decision.

(b) Reserved.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009; Ord. No. 2015-17, § 3, 6-16-2015)

Sec. 2-2110. - Administration of impact fees.

(a)

Collection of impact fee and service charge. Impact fees calculated and imposed pursuant to this article shall be collected by the collecting agency prior to issuance of a building permit. If adopted by resolution of the commission, 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 commission, shall be placed in a separate account identified for management of the impact fee system and disbursed as set forth in this article. 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 article. For purposes of petitions for refunds under section 2-2112(c) of this article, 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: police, fire and EMS, general government and parks. If existing impact fee accounts comply with the requirements of this article, then such accounts may be deemed to be the impact fee trust fund accounts established herein.
 - (2) Funds withdrawn from these accounts must be used solely in accordance with the provisions of subsection (d) of this section. The disbursal 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 article 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 article 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. Impact fees shall be appropriated or expended by the end of the calendar quarter immediately following six years after the date of payment of the impact fee or such impact fees shall be subject to refund pursuant to section 2-2112(c) of this article.
- (e) *Annual review and modification.* Beginning with adoption of the fiscal year 2009-2010 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 initial annual report may address more than 12 months of collections and expenditures. The annual report shall be distributed to the commission 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 F.S. § 163.31801 that the fees be based on the most recent and localized data. Nothing in this article shall be construed to limit the commission's authority to amend this article at any time.

- (f) *Optional annual impact fee increase.* The city may, as part of the annual report or at any other time, calculate updated impact fee schedules using appropriate construction cost inflation rate(s) in a nationally recognized publication such as the engineering news record (ENR) for the applicable time period. Such annual impact fee updates shall not require issuance of a new technical report. In order for impact fees updated under this subsection to be effective, the updated impact fee schedules shall be adopted by the commission as an amendment to this ordinance and shall comply with applicable provisions of Florida Statutes, including the notice requirements in F.S. § 163.31801.
- (g) *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 commission 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.
- (h) *Review and modification of UM Campus impact fees.* In any update to the City of Coral Gables impact fee schedule, the impact fees applicable to Type 1 development on the UM campus shall also be updated. To maintain eligibility for the impact fees applicable to Type 1 development on the UM campus, UM must provide updated data and information as requested by the city or the city's consultants as needed to update the impact fees.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009)

Sec. 2-2111. - Service charge.

Service charges may be established at the option of the commission. If established, 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.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2112. - 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 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. 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 60 days after filing of a complete petition. The city manager shall, no later than 90 days after filing of the complete petition, issue a written determination on 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) The city manager, or authorized representative, is authorized to determine whether a petition is complete and whether additional data or supporting statements by an appropriate professional are needed for evaluation of the petition. Determination of the completeness of a petition is solely at the judgment of the city. If the city manager, or authorized representative, determines that the petition is not complete, a written statement identifying insufficiencies of the petition shall be provided to the petitioner within 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) 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 supporting statements by the petitioner.
- (5) The city manager's determination on a petition shall be based on the impact fee calculation methodology in the technical report and the most appropriate land use category and/or number of demand units based on the evidence submitted by the applicant or the evidence provided in the staff report. Any reduction in the number of demand units from those presented in the technical report used in calculating impact fees due shall be based only on a permanent reduction in peak demand units generated by the new development. Such reduced demand units must be supported by a deed restriction, other permanent enforceable restriction, or reflect permanent characteristics of the new development. At the city's option, an agreement between the city and the property owner may fulfill the requirement of a permanent enforceable restriction if: i) the agreement requires immediate payment in full of

the impact fees otherwise due if the demand units generated by the new development increase due to a change in the circumstances that supported the reduction or due to any other change, ii) the agreement is recorded and is binding on all subsequent purchasers of the subject property, iii) the agreement places a lien on the property equal to the impact fees otherwise due, including a reasonable rate of interest, and iv) the agreement includes any other conditions deemed necessary by the city.

- (6) 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 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 and/or based on the demand units, as identified in the technical report, to be generated by the applicant's new development as documented by studies and data supported by qualified experts, 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 department. The applicant/petitioner shall be responsible for all costs incurred by the city in reviewing and evaluating the petition, including but not limited to, staff time and costs of outside consultants used at the discretion of the city. 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 the impact fee; (ii) the building permit for which the impact fee has been paid has lapsed for noncommencement of construction; or iii) the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due.
 - (2) Only the current owner of property may petition for a refund. A petition for refund must be filed within 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 Coral Gables

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 department; 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 article, who elects to construct or dedicate all or a portion of a system improvement, as defined in this article, or, who escrows money with the city for the construction of a system improvement, may, if all criteria in this article and this subsection (d) are fulfilled, be granted a credit for such contribution against the 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.
- (2) 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. The applicant/petitioner shall be responsible for all costs incurred by the city in reviewing and evaluating the petition, including but not limited to, staff time and costs of outside consultants used at the discretion of the city. Failure to timely file a petition for impact fee determination shall waive any right to challenge, review or recalculate the impact fee payment. 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.
- (3) If it is determined that the system improvement is in the adopted, current city capital improvements plan 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 provided 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 credit, the applicant shall pay the impact fees due less the credit at the time of issuance of the building permit.

- (4) 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, (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.
- (5) 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 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-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.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2113. - Appeal to city commission.

- (a) A petition determination by the city manager shall be final unless a written notice of appeal to the commission is filed with the city manager within 20 days of the date of the written determination by the city manager, together with 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 copies of all documents for consideration by the commission, 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 commission to consider. The appeal must include the names of all witnesses, including experts that will testify in support of appellant's appeal, with a summary of the testimony of each witness or expert. 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 30 days prior to the hearing date. If any material is submitted after that date, the commission 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 any time periods established under this article.
- (c) The commission on review shall have full power to affirm, reverse, or modify the action of the city manager so long as such commission action is based on applicable law and the provisions of this article. The appeal shall be heard by the commission 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 or the appellant submits additional written material less than 30 days prior to the hearing. The decision of the commission shall be by resolution.

(d) If a person decides to judicially appeal any decision made by the city commission, such person may need a record of the 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 an appeal is to be based.

(Ord. No. 2007-27, § 2, 8-28-2007; Ord. No. 2009-01, § 2, 1-13-2009)

Sec. 2-2114. - Judicial review.

Any request for review of a decision by the commission under this article shall be made by filing an appeal within 30 days of rendition of the commission's resolution with the circuit court in accordance with the Florida Rules of Appellate Procedure.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2115. - Effect of the impact fee on zoning and subdivision regulations.

This article 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.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2116. - Impact fee as additional or supplemental requirement.

The payment of impact fees imposed pursuant to this article 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 article; provided, however, that a property owner may be required to provide or pay, pursuant to ordinances, policies or regulations of the city, county or the State of Florida, for public facility improvements in addition to payment of impact fees pursuant to this article. Nothing in this article shall be construed as a guarantee of adequate public facilities at the time of development of any particular property.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2117. - Alternative collection method.

In the event that the appropriate amount of impact fees due pursuant to this article 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.

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2118. - Liberal construction.

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

(Ord. No. 2007-27, § 2, 8-28-2007)

Sec. 2-2119. - Severability.

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

(Ord. No. 2007-27, § 2, 8-28-2007)

Secs. 2-2120—2-2130. - Reserved.