

**MEMORANDUM**

TO: Elizabeth Hernandez, City Attorney, City of Coral Gables, Florida

FROM: Susan Schoettle-Gumm, Attorney

RE: Proposed Amendment to Impact Fee Ordinance to allow deferral/waiver of impact fees for valid public purposes, and  
Proposed Subsidized Housing Impact Fee Incentive Program Resolution

DATE: November 5, 2009

cc: Maria A. Jimenez, Assistant City Manager, City of Coral Gables, Florida  
Eric Riel, Planning Director, City of Coral Gables, Florida

Attachments: Emergency Ordinance Amending Chapter 2, Article IX of the City Code  
Resolution Establishing Subsidized Housing Impact Fee Incentive Program

Attached please find a proposed emergency ordinance to amend the City of Coral Gables' Development Impact Fee Ordinance and a proposed Resolution to create a subsidized housing impact fee incentive program. Adoption of these two items will authorize deferral of impact fees due on new subsidized housing units currently under construction by the Lola B. Walker Homeowners Foundation of Coral Gables. Four single-family detached dwelling units are being constructed for owner-occupancy within the HUD federal guidelines for affordable housing and the units are being subsidized by Miami-Dade County. Two of the dwelling units are replacing previously existing units, and, therefore, are not required to pay City of Coral Gables impact fees under Chapter 2, Article IX of the City Code. Two of the dwelling units under construction are new dwelling units and will be required to pay impact fees under Chapter 2 of the City Code if the proposed ordinance and resolution are not adopted.

**Proposed Ordinance Amending the Development Impact Fee Ordinance**

The proposed emergency ordinance amends the City of Coral Gables Development Impact Fee Ordinance. The amendments authorize the City Commission to defer or waive the payment of impact fees by new development which fulfills a public purpose. Examples of development that the City Commission could determine fulfill a public purpose are those that provide economic development benefits or the subsidized housing described above. The City Commission has previously determined that the subsidize housing being constructed by the LBW Homeowners Association provide public benefit with the adoption of Resolution No. 2009-197. The proposed ordinance amendment authorizes the City Commission to approve such deferrals or waivers through the adoption of a separate ordinance or resolution. Only the impact fees imposed under Chapter 2, Article IX of the City Code may be deferred or waived under this amendment; impact fees or connection fees imposed for water or wastewater facilities are not affected by this proposed amendment. The proposed ordinance has been advertised as an emergency ordinance so that the ordinance, if adopted, can become effective immediately to avoid delay in the completion and sale of the subsidized housing units by the LBW Homeowners Association.

## Proposed Resolution Creating Subsidized Housing Impact Fee Incentive Program

The proposed Resolution creates a program for deferral of impact fees due on dwelling units that fulfill all of the following criteria:

- 1) newly constructed single-family detached dwelling unit developed by a not-for-profit entity,
- 2) owned and occupied by family meeting HUD federal guidelines for affordable housing as determined and administered by Miami-Dade County,
- 3) unit must be subsidized, through funding and/or provision of land, by a governmental entity other than the City of Coral Gables,
- 4) owner/developer enters into an Impact Fee Deferral Agreement securing payment of the deferred impact fees if fulfillment of the above criteria are not maintained (agreement shall be recorded and is binding on subsequent purchasers), and
- 5) owner must annually file a report with the City with an affidavit of continued compliance with all requirements of the Subsidized Housing Impact Fee Incentive Program and the terms of the Impact Fee Deferral Agreement.

The criteria identified above were developed using the LBW Homeowners Association housing units as a model. The proposed deferral period is twenty (20) years with authority for the City Commission to waive or forgive the impact fees in full if compliance with the program criteria and agreement requirements are maintained for the 20 year period. If compliance with the resolution and agreement requirements is not maintained, the deferred impact fees become immediately due and payable, with interest, and the City may proceed to require payment. With adoption of the resolution, the City and the LBW Homeowners Association can proceed to execute Impact Fee Deferral Agreements on the two new subsidized housing units under construction to allow transfer of ownership upon completion of the two units.

**CITY OF CORAL GABLES, FLORIDA**

**EMERGENCY ORDINANCE NO. \_\_\_\_\_**

**AN EMERGENCY ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA AMENDING IN PART CHAPTER 2, ARTICLE IX OF THE CORAL GABLES CITY CODE (“CITY CODE”), THE CITY OF CORAL GABLES DEVELOPMENT IMPACT FEE ORDINANCE; PROVIDING AUTHORITY FOR DEVELOPMENT INCENTIVES THROUGH DEFERRAL OR WAIVER OF IMPACT FEES; FURTHER PROVIDING FOR WAIVER OF REQUIREMENT THAT SAID ORDINANCE BE READ ON TWO SEPARATE DAYS PURSUANT TO SECTION 13 OF CITY OF CORAL GABLES CHARTER; PROVIDING FOR LIBERAL CONSTRUCTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; 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”) has 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 determined that the imposition of impact fees at the time of certificate of occupancy may hinder certain types of development that fulfill a public purpose and that incentives to encourage such development serves a public purpose; and

WHEREAS, the Commission has determined that providing authority for certain incentives for development in relation to impact fees will balance the need for funding of public facilities with the need for development that fulfills a public purpose; and

WHEREAS, the Commission has determined that adoption of this ordinance is an emergency for purposes of waiving second reading pursuant to Section 13 of the City of Coral Gables Charter and Florida Statutes, Chapter 166; and

WHEREAS, the City has noticed, advertised, scheduled and held a public hearing in compliance with Florida Statutes and Section 13 of the City of Coral Gables Charter on this proposed emergency ordinance; and

WHEREAS, the Commission, after hearing from the public as well as from staff and professional consultants, has determined that it is necessary to adopt and implement the proposed emergency ordinance in order to protect public health, safety and welfare and to promote the public interest;

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:**

**SECTION 1.** The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

**SECTION 2.** Section 2-2102, Findings, of the City Code is hereby amended in part as specifically set forth as follows, with new text indicated by underlining and deleted text indicated by ~~strikethrough~~:

**Sec. 2-2102. Findings.**

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

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(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 types 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.

**SECTION 3.** Section 2-2104, Authority, of the City Code is hereby amended in part as specifically set forth as follows, with new text indicated by underlining and deleted text indicated by ~~strikethrough~~:

**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, ch. 166, F.S., as amended. The aforementioned provisions authorize and require the City: to provide and finance public facilities; to provide for the health, safety and general welfare of the City; to coordinate the provision of adequate public facilities with land development; and to implement its Comprehensive Plan. Furthermore, the Local Government Comprehensive Planning and Land Development Regulation Act, section 163.3202(3), F.S., encourages the use of innovative land development regulations, including Impact Fees, and section 166.04151, F.S. 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 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 any of these purposes.

**SECTION 4.** The City Commission hereby declares this Ordinance an emergency for purposes of waiving second reading in accordance with Section 13 of the City Charter and Florida Statutes, Chapter 166.

**SECTION 5.** 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.

**SECTION 6.** 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.

**SECTION 7.** It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of the City of Coral Gables, Florida, as amended, which provisions may be renumbered or relettered and that the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.

**SECTION 8.** The amendments to Chapter 2, Article IX of the City Code as presented in this Ordinance shall be effective immediately after adoption in accordance with applicable laws and Section 13 of the City of Coral Gables Charter.

PASSED AND ADOPTED by a four-fifths affirmative vote of the City commission in regular session of the City Commission of the City of Coral Gables, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

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DONALD D. SLESNICK II, MAYOR

ATTEST:

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WALTER J. FOEMAN, CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

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ELIZABETH HERNANDEZ  
CITY ATTORNEY