

## MEMORANDUM

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

FROM: Susan Schoettle-Gumm, Attorney

RE: Proposed Subsidized Housing Impact Fee Incentive Program Resolution and Impact Fee Deferral and Lien Agreement

DATE: December 7, 2009

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

Attachments: Resolution Establishing Subsidized Housing Impact Fee Incentive Program  
Subsidized Housing Impact Fee Deferral and Lien Agreement

Attached please find a proposed Resolution to create a subsidized housing impact fee incentive program as authorized pursuant to Ordinance No. 09-0770 and a proposed Impact Fee Deferral and Lien Agreement (no Commission action required on the agreement). Ordinance No. 09-0770, adopted by the City Commission on November 17, 2009 as an emergency ordinance, amended the City's impact fee ordinance to authorize the deferral or waiver, by ordinance or resolution, of impact fees for development fulfilling a public purpose.. Four single-family detached dwelling units are being constructed by the Lola B. Walker Homeowners Foundation of Coral Gables 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 resolution is not adopted. The criteria in the Resolution have been developed to address subsidized housing units currently under construction by the Lola B. Walker Homeowners Foundation of Coral Gables by allowing deferral of the City impact fees due. To implement the impact fee deferrals for the LBW units, the City Commission must adopt the proposed Resolution. No Commission action is required on the Impact Fee Deferral and Lien Agreement.

### 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) must be a newly constructed single-family detached dwelling unit developed by a not-for-profit entity at the time of issuance of a certificate of occupancy,
- 2) to be owned and occupied by a family meeting the HUD federal guidelines for affordable housing as determined and administered by Miami-Dade County at the time of issuance of a certificate of occupancy,
- 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 must enter into an Impact Fee Deferral and Lien Agreement for payment of the deferred impact fees if specific criteria are not maintained (agreement shall be recorded and is binding on subsequent purchasers but is subordinate to first and second mortgages),
- 5) owner, if requested in writing by the City, must annually affirm owner's continued compliance with all requirements of the Subsidized Housing Impact Fee Incentive Program and the terms of the Impact Fee Deferral and Lien Agreement, and
- 6) the deferred impact fees become due if the dwelling unit is rented or leased, regardless of the rent amount, or if the unit is sold or refinanced outside of the HUD federal guidelines for affordable housing as determined and administered by Miami-Dade County.

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 penalties, and the City may proceed to require payment. With adoption of the resolution, the City Manager and the LBW Homeowners Association can proceed to execute Impact Fee Deferral and Lien Agreements on the two new subsidized housing units under construction to allow issuance of certificates of occupancy and transfer of ownership upon completion of the two units.

#### Impact Fee Deferral and Lien Agreement

The Subsidized Housing Impact Fee Incentive Program Resolution authorizes the City to accept a recorded, executed Impact Fee Deferral and Lien Agreement in lieu of payment of the City's impact fees otherwise due prior to issuance of a certificate of occupancy on a subsidized housing unit. The Resolution authorizes the City Manager to execute the agreement on behalf of the City. The Agreement establishes the criteria that the owner must continue to meet to qualify for the twenty (20) year deferral. If the owner fails to occupy and maintain the dwelling unit as his/her homestead, sells or refinances the unit outside of the HUD guidelines for affordable housing, rents or leases the unit, and/or fails to respond to a written request from the City regarding the continued compliance with the program, then the deferred impact fees, plus interest and penalties become due and the City may proceed to collect. The recorded agreement establishes that the City's lien is on parity with city and county taxes and is superior to all interests except for the primary and secondary mortgages. The second mortgage will be held by Miami-Dade County. It was stated by the LBW representatives that funding for the first and second mortgages would not be available if the City's lien was superior to those loans.

In addition, the County requires the owner of a subsidized unit to execute an Infill Housing Initiative Affordable Housing Restrictive Covenant for Homebuyers. Provisions in this Restrictive Covenant may reduce the likelihood that the City will be repaid the deferred impact fees if the unit is sold outside of the affordable housing guidelines or if the County exercises its option to purchase the unit. The Restrictive Covenant also allows the County to approve rental of affordable housing units. In both cases, the covenants provide that any revenue in excess of the affordable housing limits would go to the County's Affordable Housing Trust Fund. If the unit is rented or sold under these circumstances, it is possible that the City's deferred impact fees will not be repaid.