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Chapter 74 - IMPACT FEE REGULATIONS
ARTICLE IV. - AFFORDABLE HOUSING IMPACT FEE DEFERRAL

ARTICLE IV. - AFFORDABLE HOUSING IMPACT FEE DEFERRAL [88]

⁽⁸⁸⁾ **Editor's note**— Section 4 of Ord. No. 2005-40 retitled art. IV to read as herein set out. Formerly, said article was entitled affordable housing impact fee waiver or deferral.

Sec. 74-401. - Impact fee deferral.
Sec. 74-402. - Affordable housing definitions.
Secs. 74-403â€”74-500. - Reserved.

Sec. 74-401. - Impact fee deferral.

(a) *Applicability.*

(1) Pursuant to the requirements established in this section and article IV, the county shall defer the payment of the impact fee for any new owner-occupied or rental development which qualifies as affordable housing under this article.

(2) Any person seeking an affordable housing deferral for proposed development shall file with the county manager an application for deferral, prior to receiving a building permit for the proposed development. The application for deferral shall contain the following:

- a. The name and address of the applicant;
- b. An up to date, complete legal description of the site upon which the development is proposed to be located;
- c. The maximum income level of the owner, or if the owner is a developer or builder, the income level of the household to which the dwelling unit it to be sold or provided for occupancy;
- d. The square footage and number of bedrooms in each dwelling unit of the development.

(3) If the proposed development meets the requirements for an affordable housing deferral as set forth in this article, the county manager may, but is not required to, enter into an impact fee deferral agreement and is authorized to execute such deferral agreements along with any corresponding tri-party agreement intended to further define repayment obligations, as may be applicable, with the owner or applicant. The impact fee deferral agreement shall be accepted by the county in lieu of prompt payment of the impact fee that would otherwise then be due and payable but for the agreement.

(4) Unless specifically provided to the contrary by majority action of the board, such as by an agreement or condition of development, water and sewer impact fees are fully exempt from all rental and CWHIP impact fee deferral programs.

(b) *Qualifying owner-occupied dwelling.* To qualify for an affordable housing impact fee deferral, an owner-occupied dwelling unit must meet all of the following criteria:

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- (1) The owner(s) or anticipated owner(s) of dwelling unit must have a very low, or moderate income level, at the time of final execution by the county of a deferral agreement as those income level terms are defined in section 74-402
 - (2) The monthly mortgage payment, including taxes and insurance, must not exceed 30 percent of that amount which represents the percentage of the median annual gross income for the applicable household category as indicated in section 74-702. However, it is not the intent to limit an individual household's ability to devote more than 30 percent of its income for housing, and housing for which a household devotes more than 30 percent of its income shall be deemed affordable if the first institutional mortgage lender is satisfied that the household can afford mortgage payments in excess of the 30 percent benchmark.
 - (3) A dwelling unit shall qualify as "owner-occupied" if:
 - a. a written affirmation from the developer to the county guarantees that the requisite affordable housing units will be constructed, and
 - b. the affirmation is in effect at the date of execution of the impact fee deferral agreement by the county, and
 - c. within six months from the date of issuance of the certificate of occupancy or the execution of the affirmation, whichever is later, any option to purchase is exercised and the purchaser takes ownership of the dwelling unit.
 - (4) If the purchaser fails to purchase the dwelling unit within the six-month period, then:
 - a. the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and
 - b. the applicant shall pay all of the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral as provided in section 74-501
 - (5) The owner, or if there is more than one owner, both of the owners, must be a first-time home buyer. To qualify as a first-time home buyer, the owner must not have had an ownership interest in his/her primary residence in the past three years.
 - (6) The dwelling unit must be the homestead of the owner(s). The owner(s) of the dwelling unit must be at least 18 years of age and must be either citizen(s) of the United States or be a legal alien who permanently resides in the United States. Proof of United States Citizenship or permanent legal residency must be established to the county's sole satisfaction. The dwelling unit must be granted a homestead tax exemption pursuant to Chapter 196, Florida Statutes.
 - (7) No more than 50 deferral agreements are permitted at any single time for an individual developer, or for any developments that are under common ownership. For purposes of this subsection, "common ownership" means 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 each corporation, firm, partnership, entity, or unincorporated association.
- (c) *Qualifying rental and community workforce housing innovation pilot program (CWHIP) dwellings.*

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(1) To qualify for an impact fee deferral, a dwelling unit offered for rent must meet all of the following criteria:

- a. The household renting the dwelling unit, including any multifamily dwelling unit, must have a very low or low income level, at the commencement of the leasehold and during the duration thereof, as those terms are defined in section 74-402
- b. The dwelling unit must be and must remain the household's permanent residence. The head of the household must be at least 18 years of age and must be either a citizen of the United States or be a legal alien who permanently resides in the United States.
- c. In no instance shall rental limits exceed the rental limits established by the Florida Housing Finance Corporation for rents adjusted to bedroom size in projects assisted under the, Florida Housing Finance Corporation or any other local, state, or federal agency, based on unit size.

(2) To qualify for an impact fee deferral, a CWHIP dwelling must meet all of the following criteria:

- a. The residential development must meet all requirements pursuant to F.S. Â§ 420.5095, (the "Community Workforce Housing Innovation Pilot Program"), as amended; be designated by the board of county commissioners as a CWHIP project for Collier County; and be approved and awarded CWHIP funds by the State of Florida.
- b. For owner-occupied CWHIP dwellings, the owner(s) of the dwelling unit must be at least 18 years of age and must be either citizen(s) of the United States, or be a legal alien who permanently resides in the United States. Proof of United States citizenship or permanent legal residency must be established to the county's sole satisfaction. The dwelling unit must be granted a homestead tax exemption pursuant to F.S. ch. 196.
- c. For rental CWHIP dwellings, the dwelling unit must be and must remain the household's permanent residence. The head of the household must be at least 18 years of age and must be either a citizen of the United States, or be a legal alien who permanently resides in the United States.

(d) *Repayment for owner-occupied units.*

(1) All impact fees deferred for owner-occupied dwelling unit at the time the building permit was issued shall become due and payable and shall be immediately paid in full to the county upon:

- a. The sale of the dwelling; or
- b. Refinancing of the purchase mortgage or loans secured by senior real property security instruments; or
- c. A loss of the homestead exemption under Section 4, Article X of the State Constitution.
- d. The first occurrence of any sale or transfer of any part of the affected real property, and in any such event the deferred impact fees shall be paid in full to the county not later than the closing of the sale, or not later than the effective date of the transfer.

(2) Repayment shall include any accrued interest. Interest shall be computed at the rate of five percent per annum, but no event shall it exceed 25 percent of the total fee amount.

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(3) Notwithstanding anything in this subsection (d)(1) of this section 74-401, the director of the financial administration and housing department of community development and environmental services division may waive the triggering of the obligation to pay deferred impact fees due to a refinancing if the director determines that the refinancing is for improvements or repairs to the dwelling that will enhance the value of the dwelling, and is of such a nature as not to justify that the deferred impact fees should become due and payable because of the sale, transfer, or refinancing.

(e) *Repayment for rental and community workforce housing innovation pilot program (CWHIP) dwelling units.* Deferred impact fees for rental dwelling units, including any multifamily dwelling units, single-family detached houses, modular homes (also known as residential manufactured buildings) and mobile homes (also known as manufactured homes) as defined in section 74-108 of this chapter, and community workforce housing innovation pilot program (CWHIP) dwelling units, shall in all events be due and payable not later than ten years after the execution of the impact fee deferral agreement by the county, unless otherwise extended by the board of county commissioners. Such fees shall be accelerated and automatically be due and payable prior to that time period if there is any breach of the subject impact fee deferral agreement by the noncounty party. For CWHIP units, the residential development must at all times continue to meet all requirements of F.S. Â§ 420.5095, (the "Community Workforce Housing Innovation Pilot Program"), as amended, throughout the deferral period, failing which the lien shall become immediately due and payable and shall thereafter generate interest at the statutory judgment rate set forth in F.S. Â§ 55.03, as amended.

(f) *Repayment obligations.*

(1) *Generally.* The impact fees deferred shall be a lien on the property until all requirements under this article and the agreement have been satisfied.

(2) *Rentals.*

a. Annually, the owner (i.e., lessor) of a rental dwelling unit, including any multi-family dwelling unit, shall provide to the county manager an affidavit of compliance with the criteria set forth in this section. The affidavit must be filed within 30 days of the anniversary date of the issuance of a certificate of occupancy. If the affidavit is not filed on time the affiant shall pay to the county a \$50.00 late fee.

b. If the income of any unit renter which originally qualified as very low or low income level as defined in section 74-402, below, exceeds the standards set forth in subsection (c) by more than 40 percent, then the deferred impact fee shall become immediately due and payable by the owner or, in the alternative, the owner shall have 90 days to comply with the affordable housing standards set forth in this section. Developments which are then monitored by the Florida Housing Finance Corporation, or any other state or federal agency, will not be required to file this separate affidavit of compliance with the county manager. The applicant shall provide a true copy of these monitoring reports to the County Department of Financial Administration and Housing.

(3) *Owner-occupied dwelling units.* If the household income of the qualified owner-occupied dwelling unit rises above the standards for deferrals set forth in subsection (b) of this section, the owner shall maintain the deferral. Notwithstanding the foregoing, all outstanding impact fees deferred shall be paid in full upon sale or transfer of the dwelling unit.

(g) *Deferral agreements.* The owner receiving an impact fee deferral shall enter into a deferral agreement of impact fee agreement with the county. A separate deferral agreement shall be executed for

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each qualifying owner-occupied dwelling or qualifying rental dwelling. While applicants are required to enter into a deferral agreement in order to receive a deferral of impact fees, nothing in this section requires the county to enter into a deferral agreements. The deferral agreement shall provide for, at a minimum, the following and shall further include such provisions deemed necessary by the board to effectuate the provisions of this article:

- (1) The legal description of the dwelling unit.
 - (2) Where an impact fee deferral is given to an owner who will be selling or renting the dwelling unit to a subsequent purchaser or renter, the development must be sold or rented to households meeting the criteria set forth in this article in order to maintain the deferral.
 - (3) For each such owner-occupied dwelling unit, the amount of impact fees deferred shall be paid to the county in full upon sale. For rental units, including any multifamily dwelling unit, the impact fees deferred shall in all events be due and payable no later than ten years after the execution by the county of the impact fee deferral agreement. Such fees shall be accelerated and thereby be automatically due and payable prior to that time period if there is any breach in the subject impact fee deferral agreement by the noncounty party.
 - (4) The deferred impact fees shall be a lien on the property. The lien may be foreclosed upon in the event of noncompliance with the requirements of the agreement. The agreement described herein shall operate as a lien against the dwelling unit. The lien shall terminate upon the recording of a release or satisfaction of lien in the public records of the county. Such release shall be recorded upon payment in full. Neither the deferred impact fees nor the agreement providing for the deferral of impact fees shall be transferred, assigned, credited or otherwise conveyed from the dwelling unit. The deferrals of impact fees and the agreement thereto shall run with the land.
 - (5) Upon satisfactory completion of the agreement's requirements, the county shall record any necessary documentation evidencing same, including, but not limited to, a release of lien.
 - (6) In the event the owner is in default under the agreement, and the default is not cured within 30 days after written notice is provided to the owner, the board may at its sole option collect the impact fee amounts in default as set forth by article V, section 74-501, or bring a civil action to enforce the agreement or declare that the deferred impact fees are then in default and immediately due and payable. The board shall be entitled to recover all fees and costs, including attorney's fees and costs, incurred by the county in enforcing the agreement, plus interest at the then maximum statutory rate for judgments calculated on a calendar day basis until paid.
 - (7) The agreement shall be binding upon the owner's successors and assigns.
 - (8) The agreement shall be recorded in the official records of the county at no cost to the county.
- (h) *Ceiling on deferrals.*
- (1) The aggregate amount of impact fee deferrals granted pursuant to subsection (b) of this section shall be limited, in total, to an amount not exceeding three percent of the previous years' total impact fee collections.
 - (2) Deferrals shall be available on a first-come, first-served basis. If the requests for deferrals exceed the number of deferrals available, the county manager may allocate deferrals based on the extent to which the deferrals implement the comprehensive plan, or other criteria based on policies

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and procedures that may be adopted by the board of county commissioners.

(3) The county manager shall maintain a tracking system to ensure that the aggregate amount of impact fee deferrals do not exceed the deferral ceilings established in this subsection.

(4) The aggregate amount of impact fee deferrals granted pursuant to subsection (c) of this section shall be limited, in total, to 225 units per fiscal year with no rollover of funding.

(i) *Amendments.* Any changes or amendments to this article or the minimum funding requirements adopted in this article must occur as an ordinance amendment at a public hearing of the board of county commissioners.

(j) *Eligible dwelling unit categories.* Agreements for the deferral of impact fees for affordable housing may only be approved for the following types of dwelling units:

(1) Single-family residences that are fully detached, and either owner-occupied or rental dwelling units, or

(2) Owner-occupied or rental dwelling units in a residential condominium, townhouse or duplex structure, or

(3) Rental (leased) multifamily dwelling units.

(4) Rental modular homes that meet, as a minimum, the then current standards of F.S. ch. 553, for homeownership or rental, and that bear the department of community affairs insignia seal certifying that the structure is in compliance with the Florida Manufactured Buildings Act of 1979, as amended or superseded.

(5) Rental mobile homes that are constructed to then applicable standards promulgated by the United States Department of Housing and Urban Development (HUD) and that bear a two inch by four inch metal, rectangular red and silver certification label on each section of the home certifying that the home has been inspected in accordance HUD requirements, and that have been constructed in conformance with federal manufactured home construction and safety standards in effect on the date of manufacture.

(k) *Apartment complexes/multifamily dwelling units.* Notwithstanding any provisions elsewhere in this chapter to the contrary, any owner that develops an affordable housing rental apartment complex, consisting in whole or part of multifamily dwelling units serving very low and/or low-income levels and meeting all requirements, and subject to all conditions, of this article shall be entitled to defer 100 percent of the impact fees applicable only to such rental multifamily dwelling units serving very low and/or low-income levels if: (i) all such deferred impact fees are paid on or before the end of ten years from the date such impact fees are deferred; and (ii) the, rental apartment development shall remain affordable housing qualified (under this article) for a minimum of 15 years.

(l) *Single-family, detached residences and duplexes.* Impact fee deferrals for only single-family, detached residences, or duplexes, as owner occupied dwelling units, will automatically be subordinate to the owner's first mortgage and/or any government funded affordable housing loan such as SAIL or HOME loan. Impact fee deferrals may also be similarly subordinated in the case of rental dwelling units, including any multifamily dwelling units, but only if the owner provides additional security satisfactory to the county such as additional or substitute collateral in the form of cash or cash equivalent financial instruments which will yield the full amount of the deferred impact fees when they may become due and payable. This

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provision requiring additional security is not applicable to community workforce housing innovation pilot program (CWHIP) projects.

(m) *Timing of payment.* Any units meeting the requirements of this subsection that are sold below the maximum home sales price in Collier County for Florida Housing Finance Corporation Programs, or qualify for and enter into an approved deferral agreement shall not be required to pay the impact fees applicable for the unit or building any sooner than issuance of the building permit for construction or as may otherwise be set forth in such waiver or deferral agreement. In order to obtain a certificate of adequate public facilities concurrently with the issuance of the final site development plan or plat, the applicant shall first enter into an approved deferral agreement with Collier County or provide a notarized affidavit to the county manager, which must include the following:

- (1) Name of project, legal description and number assigned by Collier County to the development order;
- (2) Name of applicant and owner, if different;
- (3) Number of dwelling units;
- (4) Statement of intent that the subject dwelling unit sales price will meet the affordability guidelines of the Florida Housing Finance Corporation for Collier County.

(n) *Certificate of occupancy requirements on filing of affidavit.* Prior to the issuance of a certificate of occupancy for individual dwelling units which have provided the foregoing affidavit instead of entering into a deferral agreement with Collier County, the applicant must also provide a copy of the executed sales contract to the county manager demonstrating a qualifying sales price. A copy of the closing statement demonstrating a qualifying sales price will be provided to the county manager within ten days of the closing of the sale of each qualifying dwelling unit.

(o) *Violations.* Failure to adhere to the requirements set forth by this section may result in the impact fees becoming immediately due and payable and payment being considered delinquent from the date of the notarized affidavit and then becoming subject to the collection provisions provided for in article V, section 74-501, including payment of delinquency fees and interest.

(p) *Transitional provisions.* The following provisions apply to any impact fee deferrals or reimbursements that were granted prior to August 1, 2005:

- (1) Any deferral agreement that was executed prior to August 1, 2005, shall continue in effect in accordance with its terms consistent with the requirements in effect at the time that the deferral agreement was executed.
- (2) If reimbursement is required pursuant to an impact fee deferral or waiver that was paid with State Housing Initiatives Partnership (SHIP) Program funds, payment will be made to the county affordable housing trust fund.

(Ord. No. 01-13, Â§ 1, 3-13-01; Ord. No. 02-34, Â§ 2, 6-25-02; Ord. No. 02-58, Â§ 1, 11-5-02; Ord. No. 03-25, Â§Â§ 2, 3, 5-27-03; Ord. No. 2005-40, Â§ 4; Ord. No. 2006-40, Â§ 4; Ord. No. 07-84, Â§ 1)

Sec. 74-402. - Affordable housing definitions.

The following sets forth the applicable definitions for affordable housing dwelling units.

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(a) *"Very, very low income families"* means families whose incomes do not exceed 35 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

(b) *"Very low income families"* means families whose incomes do not exceed 50 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

(c) *"Low income families"* means families whose incomes are more than 50 percent but do not exceed 80 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

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

(Ord. No. 01-13, Â§ 1, 3-13-01; Ord. No. 02-34, Â§ 3, 6-25-02; Ord. No. 2005-40, Â§ 4)

Secs. 74-403â€”74-500. - Reserved.