

**CITY OF MARCO ISLAND  
ORDINANCE NO. 02-17**

**AN ORDINANCE TO ESTABLISH CITY OF MARCO ISLAND FIRE/RESCUE SERVICES IMPACT FEES; ESTABLISHING PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING IMPOSITION, PAYMENT, USE OF IMPACT FEE MONIES, AND ALTERNATIVE FEE CALCULATIONS; PROVIDING MISCELLANEOUS PROVISIONS; PROVIDING WAIVER OR DEFERRALS FOR AFFORDABLE HOUSING; PROVIDING ALTERNATIVE COLLECTION METHOD, DEVELOPER CONTRIBUTION CREDIT, REVIEW HEARING; PROVIDING SCHEDULE OF IMPACT FEE RATES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 1.01 of the Marco Island City Charter empowers the city to adopt, amend, or repeal ordinances, resolutions, and codes as may be required for the good governing of the city; and

**WHEREAS**, future development should contribute its fair share to the costs of improvements and additions to the fire/rescue services system that are required to accommodate the use of such facilities by growth; and

**WHEREAS**, implementation of an impact fee to require future fire/rescue services impact development to contribute its fair share of the cost of improvements and additions to the fire/rescue services system is an integral and vital element of the regulatory plan of growth management; and

**WHEREAS**, the imposition of a fire/rescue services impact fee is to provide a source of revenue to fund the development or improvement of the fire/rescue services system necessitated by growth.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Marco Island, Florida that:

**Sec. 1. Purpose and Intent.**

The purpose and intent of this chapter is to provide for a fire/rescue services impact fee so that new development contributes its fair share to the cost and improvements to the fire/rescue services system.

**Sec. 2: Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building or structure* shall mean a detached, subordinate structure, the use of which is clearly incidental to and related to the use of the principal building or use of the land and which is located on the same lot as the principal building.

*Affordable housing* shall mean a qualified dwelling unit or project, which is offered for sale or rent and meets specific eligibility criteria as contained in the housing element of the Comprehensive Plan.

*Alternative fire/rescue services impact fee* shall mean any alternative fee calculated by the applicant and approved by the City Council.

*Alternative fire/rescue services impact fee study* shall mean a study prepared by the applicant and submitted to the city manager.

*Applicant* shall mean the person who applies for a building permit.

*City Council* shall mean the City Council of Marco Island, Florida.

*Building* shall mean any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons, chattels, or property of any kind or any other improvement, use, or structure, which creates or increases the potential demand in the fire/rescue services system.

*Building permit* shall mean an official document or certificate issued by the authority having jurisdiction, authorizing the development or siting of any building.

*City* shall mean the City of Marco Island, a political subdivision of the County of Collier, State of Florida.

*City attorney* shall mean the person appointed by the City Council of Marco Island to serve as its counsel, or the designee of such person.

*City manager* shall mean the chief administrative officer of the city, appointed by the City Council of Marco Island, or the designee of such person.

*Encumbered* shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property provided by a vendor, supplier, contractor or owner.

*Impact fee study* shall mean the study adopted, as amended and supplemented.

*Fire/rescue services impact development* shall mean land development designed or intended to permit a use of land which will contain more dwelling units, buildings or floor space than the existing use of land or otherwise change the use of land that increases the impact upon the fire/rescue services system.

*Fire/rescue services* shall mean the primary and support facilities, land, improvements, furniture, vehicles and equipment provided by the city that are primarily used for fire suppression and protection activities.

*Fire/rescue services impact fee or impact fee* shall mean the fee imposed by the city, or, if applicable, the alternative fire/rescue services impact fee.

*Local Government Comprehensive Planning and Land Development Regulation Act* means the provisions of Part II, Chapter 163, Florida Statutes (1999), as amended or supplemented, or its successor in function.

*Owner* shall mean the person holding legal title to the real property upon which fire/rescue services impact development is to occur.

*Person* shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

*Residential, single-family*, pursuant to the definition contained in the Land Development Code.

*Residential, multiple-family*, pursuant to the definition contained in the Land Development Code.

*Square footage* shall mean the gross area measured in feet from the exterior faces of exterior walls or other exterior boundaries of the building.

### **Sec. 3. Rules of Development.**

For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of development shall apply:

- (1) In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
- (2) The word "shall" is always mandatory and not discretionary and the word "may" is permissive.
- (3) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

- (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."
- (5) Unless the context clearly indicated the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or", the conjunction shall be interpreted as follows:
  - a. "And" indicated that all the connected terms, conditions, provisions or events shall apply.
  - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
  - c. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (6) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances or like kind or character.

#### **Sec. 4. Findings.**

It is hereby ascertained, determined and declared:

- (1) Future growth represented by fire/rescue services impact development should contribute its fair share to the cost of improvements and additions to the fire/rescue services system that are required to accommodate the use of such facilities by growth.
- (2) Implementation of the impact fee to require future fire/rescue services impact development to contribute its fair share of the cost of improvements and additions to the fire/rescue services system is an integral and vital element of the regulatory plan of growth management.
- (3) The standard of service for the fire/rescue services system, as determined in the impact fee study, is hereby approved and adopted by the city.
- (4) Capital planning is an evolving process and the standard of service for the fire/rescue services system constitutes a projection of anticipated need for fire equipment and facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns and the dynamic nature of population growth, it is the intent of the City Council that the standard of service for the fire/rescue services system and the impact fee imposed be reviewed and adjusted periodically, to ensure that the fire/rescue services impact fees are imposed equitably and lawfully, based upon actual and anticipated growth at the time of their imposition.

- (5) The imposition of the fire/rescue services impact fee is to provide a source of revenue to fund the development or improvement of the fire/rescue services system necessitated by growth.
- (6) The City Council specifically finds that fire/rescue services benefit all residents of the city and, therefore, the fire/rescue services impact fee shall be imposed in all areas of the city.
- (7) This article shall not be construed to permit the collection of impact fees from fire/rescue services impact development in excess of the amount reasonably anticipated to offset the demand on the fire/rescue services system generated by the fire/rescue services impact development occurring subsequent to the effective date of this.
- (8) Improvements and additions to the fire/rescue services system needed to eliminate any deficiency between the existing fire/rescue services system and the standard of service utilized in the adopted impact fee study, as amended and supplemented, shall be funded by revenues other than impact fees. Therefore, the revenue derived from the impact fee shall be utilized only for the acquisition of improvements and additions to the fire/rescue services system, which are necessitated by fire/rescue services impact development occurring subsequent to the effective date of this article.

#### **Sec. 5. Adoption of Impact Fee Study.**

The City Council hereby adopts and incorporates by reference the Fire/Rescue Services Impact Fee Rate Study, dated April 8, 2002 and any amendments, updates, or supplements thereto particularly the assumptions, conclusions and findings in such study and its amendments as to the determination of anticipated costs of additions to the fire/rescue services system required to accommodate growth.

#### **Sec. 6. Imposition.**

- (a) All fire/rescue services impact development within the city shall pay the fire/rescue services impact fee as set forth and established in Appendix A.
- (b) The City Council hereby adopts the fire/rescue services impact fee incorporated within Appendix A, which shall be imposed upon all fire/rescue services system impact development occurring within the city.
- (c) The fire/rescue services impact fee shall be paid in addition to all other fees, charges and assessments due for the issuance of a building permit and is intended to provide funds only for growth necessitated improvements and additions to the fire/rescue services system.

## **Sec. 7. Payment.**

- (a) Except as otherwise provided in this article, prior to the issuance of a building permit for a fire/rescue services impact development, an applicant shall pay the required fire/rescue services impact fee.
- (b) The obligation for payment of the fire/rescue services impact fee shall run with the land.
- (c) In the event that a building permit issued for a fire/rescue services impact development expires prior to completion of the fire/rescue services impact development for which it was issued, the applicant may within 90 days of the expiration of the building permit apply for a refund of the fire/rescue services impact fee. Failure to timely apply for a refund of the fire/rescue services impact fee shall waive any right to a refund.
  - (1) Upon receipt of application for a refund, and after verifying that the building permit has expired and that the fire/rescue services impact development has not been completed, the city manager shall refund the fire/rescue services impact fee paid for such fire/rescue services impact development.
  - (2) A building permit, which is subsequently issued for a fire/rescue services impact development on the same property, which was the subject of a refund, shall pay the required fire/rescue services impact fee.

## **Sec. 8. Use of Monies.**

- (a) The City Council hereby establishes separate accounting for the fire/rescue services impact fees, to be designated as the "Fire/Rescue Services Impact Fee" which shall be maintained separate and apart from all other accounts of the city. All such impact fees shall be accounted for therein.
- (b) The monies accounted for as "Fire/Rescue Services Impact Fee" shall be used solely for the purpose of providing growth-necessitated development improvements, additions, and capital equipment for the fire/rescue services system in the city including, but not limited to:
  - (1) Design and development plan preparation;
  - (2) Permitting and fees;
  - (3) Development and design of fire/rescue services system buildings or improvements and additions thereto;

- (4) Design and development of new drainage facilities required by the development of fire/rescue services system buildings, facilities or improvements and additions thereto;
  - (5) Relocating utilities required by the development of fire/rescue services system buildings, facilities or improvements and additions thereto;
  - (6) Landscaping;
  - (7) Development management and inspection;
  - (8) Surveying, soils, and material testing;
  - (9) Acquisition of capital equipment for fire suppression and protection;
  - (10) Acquisition of apparatus, equipment, or furniture necessary to expand the fire/rescue services system.
  - (11) Repayment of monies transferred or borrowed from any budgetary fund of the city subsequent to the adoption of this article, which were used to fund development, acquisition of improvements and additions to the fire/rescue services system;
  - (12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth impacted improvements and additions to the fire/rescue services system subsequent to the adoption of this article;
  - (13) Reimbursement of fire/rescue services impact fees due an applicant;
  - (14) Design and development of roadway improvements required by the fire/rescue services system; and
  - (15) To the extent provided by law, reimbursement or refund of costs incurred by the city in the preparation of any update to the impact fee study, any amendments or supplements, and any other administrative costs incurred by the city.
- (c) The monies deposited into the fire/rescue services impact fee account shall be used solely to finance improvements and additions to the fire/rescue services system required by growth as projected in the impact fee study.
- (d) Any funds on deposit, which are not immediately necessary for expenditure, shall be invested by the city. All income derived from such investments shall be accounted for as the "fire/rescue services impact fee" and used as provided herein.

- (e) The fire/rescue services impact fee collected pursuant to this article shall be returned to the then current owner of the property for which such fee was paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which such fee was paid. Refunds shall be made only in accordance with the following procedure:
- (1) The then-current owner shall petition the city manager for the refund prior to the end of the fiscal year immediately following the sixth anniversary of the date of the payment of the fire/rescue services impact fee.
  - (2) The petition for refund shall contain:
    - a. A notarized sworn statement that the petitioner is the then-current owner of the property for which the impact fee was paid;
    - b. A copy of the dated receipt issued for payment of such fee or such other record as would indicate payment of such fee;
    - c. A certified copy of the latest recorded deed; and
    - d. A copy of the most recent ad valorem tax bill.
  - (3) Within three months from the date of receipt of a petition for refund, the city manager will advise the petitioner and the City Council of the status of the impact fee requested for refund, and if such impact fee has not been expended or encumbered within its applicable time period, then it shall be returned to the petitioner. For the purposes of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out.
- (f) Any owner entitled to a refund who fails to file a timely petition for a refund upon becoming eligible to do so shall be deemed to have waived any claim for a refund, and the city shall be entitled to retain and apply the impact fees for growth necessitated capital improvements and additions to the fire/rescue services system.

#### **Sec. 9. Alternative Fee Calculation.**

- (a) In the event an applicant believes that the impact to fire/rescue services system resulting from his fire/rescue services impact development is less than the fee established, such applicant may, prior to issuance of a building permit for such fire/rescue services impact development, submit a calculation of an alternative fire/rescue services impact fee to the city manager pursuant to the provisions of this section. Upon receipt of the alternative fire/rescue services impact fee, the city manager shall schedule a hearing before the City Council at a regularly scheduled meeting or a special meeting called for the purpose of reviewing the alternative fire/rescue services impact fee and shall provide the applicant written notice of the time and place of the hearing.

- (b) The alternative fire/rescue services impact fee calculations shall be based on data, information or assumptions contained in this article and the impact fee study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.
- (c) If a previously approved fire/rescue services impact development project submitted, during its approval process, an alternative fire/rescue services impact study substantially consistent with the criteria required by this section, and if such study is determined by the City Council to be current, the fire/rescue services system impact of such previously approved fire/rescue services impact development shall be presumed to be as described in the prior study. In such circumstances, an alternative fire/rescue services impact fee shall be established reflecting the impact described in the prior study. There shall be a rebuttable presumption that an alternative fire/rescue services impact study conducted more than two years earlier is invalid.
- (d) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative fire/rescue services impact fee complies with the requirements of this section and that the alternative fire/rescue services impact fee was calculated by the use of a generally accepted methodology, the alternative fire/rescue services impact fee shall be paid in lieu of the fee set forth in Section 19.
- (e) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative fire/rescue services impact fee does not comply with the requirements of this section or that the alternative fire/rescue services impact fee was not calculated by a generally accepted methodology, then the city shall provide to the applicant written notification of the rejection of the alternative fire/rescue services impact fee and the reason therefor.
- (f) Any applicant or owner who has submitted a proposed alternative fire/rescue services impact fee pursuant to this section and desires the immediate issuance of a building permit shall pay prior to or at the time the request for hearing is filed the applicable fire/rescue services impact fee. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the City Council, shall be refunded to the applicant or owner.

#### **Sec. 10. Exemptions.**

- (a) The following shall be exempted from payment of the impact fees:

- (1) Alterations or replacement of a dwelling unit or building with a new dwelling unit or building of the same size or use and which will not increase the square footage associated therewith.

#### **Sec. 11. Changes of Size and Use.**

Impact fees shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit or the development of an accessory building if the alteration, expansion or replacement of the building or dwelling unit or the development of an accessory building results in a land use determined to: (1) increase the number of dwelling units; (2) increase the square footage; or (3) change the land use so as to constitute a different impact fee land use category. The impact fee imposed under the applicable impact fee rate shall be calculated as follows:

- (1) If the impact fees are calculated on land use and not square footage, the impact fees imposed shall be the impact fees due under the applicable impact fee rate for the impact fee land use category resulting from the alteration, expansion or replacement less the impact fee that would be imposed under the applicable impact fee rate for the impact fee land use category prior to the alteration, expansion or replacement.
- (2) In the event the square footage of a building is increased, the impact fee shall be calculated only for that increased square footage.
- (3) The impact fee imposed for any accessory buildings shall be that applicable under the impact fee rate for the land use for the primary building.

#### **Sec. 12. Vested Rights.**

- (a) Any owner of land, which was the subject of a development order prior to the effective date of this article, may petition the City Council for a vested rights determination, which would exempt the landowner from the provisions of this article. Such petition shall be evaluated by the city attorney and a decision made based on the following criteria:
  - (1) The existence of a valid, unexpired governmental act of the city authorizing the specific development for which a determination is sought;
  - (2) Expenditures or obligations made or incurred in reliance upon the authorizing governmental act that are reasonably equivalent to the fees required by this article;
  - (3) Other factors that demonstrate it is inequitable to deny the petitioner the opportunity to complete the previously approved development under the conditions of approval by requiring the petitioners to comply with the requirements of this article. For the purposes of this paragraph, the

following factors shall be considered in determining whether it is inequitable to deny the petitioner the opportunity to complete the previously approved development:

- a. Whether the injury suffered by the petitioner outweighs the public cost of allowing the development to go forward without payment of the impact fee required by this article; and
  - b. Whether the expenses or obligations for the development were made or incurred subsequent to the effective date of this article.
- (b) The city attorney shall make a written determination as to whether the owner has established a vested right in the fire/rescue services impact development and, if so, whether the development would exempt the owner from the provisions of this article.
- (c) Any owner aggrieved by a decision of the city attorney pursuant to this section may request a review hearing on such decision.

### **Sec. 13. Affordable Housing.**

Consistent with the goals, objectives and policies contained in the Housing Element of the city's adopted Comprehensive Plan, all qualified affordable housing projects on Marco Island will be considered for waiver or deferment of local impact fees, including fire service impact fees. Pursuant to the terms and conditions contained in the executed Housing Interlocal Agreement, Collier County Housing and Urban Improvement staff will oversee the application process, and review and make recommendations concerning requests for county impact fee waiver or deferment for qualified housing projects. Any affordable housing project recommended for county impact fee waiver or deferment by Collier County Housing staff will be considered for fire/rescue services impact fee waiver or deferment.

### **Sec. 14. Alternative Collection Method.**

In the event the fire/rescue services impact fee are not paid prior to the issuance of a building permit for the affected fire/rescue services impact development, the city shall proceed to collect the fire/rescue services impact fee as follows:

- (1) The city shall serve, by certified mail, return receipt requested, a "Notice of Impact Fee Statement" upon the applicant at the address set forth in the application for building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the city. The city shall also attach a copy of the "Notice of Impact Fee Statement" to the building permit posted at the affected fire/rescue services impact development site if the building is under development. Service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first. The "Notice of

Impact Fee Statement" shall contain the legal description of the property and shall advise the applicant and the owner as follows:

- a. The amount due and the general purpose for which the fire/rescue services impact fee was imposed;
  - b. That a hearing may be requested within 30 calendar days from the effective date of service of the notice of impact fee statement, by making application to the office of the city manager.
  - c. That the fire/rescue services impact fee shall be delinquent if not paid and received by the city within 30 calendar days of the effective date of service of the notice of impact fee statement, excluding the date of receipt or if a hearing is not requested, and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid; and
  - d. That in the event the fire/rescue services impact fee become delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records book of the city.
- (2) The fire/rescue services impact fee shall be delinquent if, within 30 calendar days from the effective date of service of the notice of impact fee statement, neither the impact fees have been paid and received by the city, nor a hearing is requested. In the event a hearing is requested, the impact fees shall become delinquent if not paid within 30 days from the date the City Council determines the amount of impact fees due upon the conclusion of such hearing. Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.
- (3) Should the fire/rescue services impact fee become delinquent, the city shall serve, by certified mail return receipt requested, a "Notice of Lien" upon the delinquent applicant, if the building is under development at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and delinquent owner that due to their failure to pay the fire/rescue services impact fee, the city shall file a claim of lien with the clerk of the circuit court.
- (4) Upon the mailing of the notice of lien, the city attorney shall file a claim of lien with the clerk of the circuit court for recording in the official records of the county. The claim of lien shall contain the legal description of the property, the amount of the delinquent impact fee and the date of its imposition. Once recorded, the claim of lien shall constitute a lien against

the property described therein. The city attorney shall proceed expeditiously to collect, foreclose, or otherwise enforce said lien.

- (5) After the expiration of one year from the date of recording of the claim of lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in Chapter 173, Florida Statutes, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.
- (6) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided herein.
- (7) The collection and enforcement procedures set forth in the section shall be cumulative with, supplemental to and in addition to, all other applicable procedures provided in any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the State of Florida.

#### **Sec. 15. Developer Contribution Credit.**

- (a) The city shall grant a credit against the fire/rescue services impact fee imposed by this Article, for the development of any building facilities or improvements and additions thereto made to the fire/rescue services system required pursuant to a development order or made voluntarily in connection with fire/rescue services impact development. Such development shall be subject to the approval of the city manager and shall be an integral part of and a necessary accommodation to an existing or contemplated fire/rescue services system.
- (b) The amount of developer contribution credit to be applied shall be determined at the time that the fire/rescue services impact fee is paid according to the following standards of valuation: the cost of anticipated development to the fire/rescue services system shall be based upon professional opinions of probable cost certified by a professional architect or engineer.
- (c) Prior to issuance of a building permit, the applicant shall submit to the city manager a proposed plan and estimate of costs for contributions to the fire/rescue services system. The proposed plan and estimate shall include:
  - (1) A designation of the fire/rescue services impact development for which the proposed plan is being submitted;

- (2) A list of the contemplated fire/rescue services system improvements contained within the plan;
  - (3) An estimate of proposed development costs certified by a professional architect or engineer; and
  - (4) A proposed time schedule for completion of the proposed plan.
- (d) Upon receipt of the proposed plan, the city manager shall schedule a hearing before the City Council, at a regularly scheduled meeting or a special meeting called for the purpose of reviewing the proposed plan, and shall provide the applicant or owner written notice of the time and place of the hearing.
- (e) The City Council shall determine:
- (1) If such proposed plan of development is in conformity with contemplated fire/rescue services additions to the fire/rescue services system;
  - (2) If the proposed plan is consistent with the public interest; and
  - (3) If the proposed development time schedule for the completion of the plan is consistent with the city's capital improvement program for the fire/rescue services system.

The decision of the City Council as to whether to accept the proposed plan of development shall be in writing and issued within ten working days of the review. A copy shall be provided to the applicant. Upon approval of a proposed plan of development, the City Council shall determine the amount of development credit based upon the above standards of valuation and shall approve the timetable for completion of development.

- (f) All development cost estimates shall be based upon, and all development plans and specifications shall be in conformity with the fire/rescue services development standards of the city. All plans and specifications shall be approved by the city manager prior to commencement of development.
- (g) Any developer contribution credit granted from the fire/rescue services impact fee shall only be for those donations or contributions made to a fire/rescue services system.
- (h) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit shall pay prior to or at the time the request for hearing is filed the applicable fire/rescue services impact fee. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the

amount due, as determined by the City Council, shall be refunded to the applicant or owner.

- (i) In the event the amount of developer contribution determined to be applicable by the City Council pursuant to an approved plan of development exceeds the total amount of impact fees due by the applicant based upon the contemplated improvements to the fire/rescue services system proposed by the applicant, the city shall execute with the applicant an agreement for future reimbursement of the excess of such contribution credit from future receipts by the city of fire/rescue services impact fees. Such agreement of reimbursement shall not be for a period in excess of five years from the date of completion of the approved plan of development and shall provide for a forfeiture of any remaining reimbursement balance at the end of such five-year period.

#### **Sec. 16. Review Hearings.**

- (a) An applicant or owner who is required to pay a fire/rescue services impact fee, shall have the right to request a review hearing.
- (b) Such hearing shall be limited to the review of the following:
  - (1) The application of the fire/rescue services impact development.
  - (2) A vested rights determination under this Article.
  - (3) The denial of an affordable housing waiver or authorization for deferral pursuant to this Article.
- (c) Such hearing shall be requested by the applicant or owner within 30 days of the date of first receipt of the following:
  - (1) Notice of impact fee statement;
  - (2) A vested rights determination;
  - (3) The denial of an affordable housing waiver or authorization for deferral.

Failure to request a hearing within the time provided shall be deemed a waiver of such right.
- (d) The request for hearing shall be filed with the office of city manager and shall contain the following:
  - (1) The name and address of the applicant or owner;
  - (2) The legal description of the property in question;

- (3) If issued, the date the building permit was issued;
  - (4) A brief description of the nature of the development being undertaken pursuant to the building permit;
  - (5) If paid, the date the fire/rescue services impact fee was paid; and
  - (6) A statement of the reasons why the applicant or owner is requesting the hearing.
- (e) Upon receipt of such request, the city manager shall schedule a hearing before the City Council at the regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant or owner written notice of the time and place of the hearing. Such hearing shall be held within 45 days of the date the request for hearing was filed.
  - (f) Such hearing shall be before the City Council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
  - (g) Any applicant or owner who requests a hearing pursuant to this section and desires the immediate issuance of a building permit, or if a building permit has been issued without the payment of the fire/rescue services impact fee, shall pay prior to or at the time the request for hearing is filed the applicable impact fees. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights.
  - (h) An applicant or owner may request a hearing under this section without paying the applicable impact fee but no building permit shall be issued until such impact fees are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

#### **Sec. 17. Review Requirement.**

- (a) This article and the impact fee study shall be reviewed at least every five (5) years. The initial and each review shall consider new estimates of population and other socioeconomic data; changes in development, land acquisition and related costs and adjustments to the assumptions, conclusions or findings set forth in the study. The purpose of this review is to evaluate and revise, if necessary, the fire/rescue services impact fee to assure that they do not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand generated by the fire/rescue services impact development on the fire/rescue services system. In the event the review of the article required by this section alters or changes the assumptions, conclusions, and findings of the study adopted by reference, revises or changes the

fire/rescue services system or alters or changes the amount of impact fees, the study adopted by reference shall be amended and updated to reflect the assumptions, conclusions, and findings of such reviews and shall be amended to adopt by reference such updated studies.

**Sec. 18. Declaration of Exclusion From Administrative Procedures Act.**

Nothing contained in this article shall be construed or interpreted to include the city in the definition of agency contained in Section 120.52, Florida Statutes, or to otherwise subject the city to the application of the administrative procedures act, Chapter 120, Florida Statutes. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this article including specifically, but not limited to, consideration of a petition for vested rights determination, a determination of entitlement to an impact fee waiver or authorization for deferral, and a review hearing.

**Sec. 19. Appendix A. Impact Fee Rates**

Land Use	Total Fire/rescue Cost Per Unit of Development
RESIDENTIAL: Single Family Multi-family	304.53 per dwelling unit 310.89 per dwelling unit
NON-RESIDENTIAL: Lodging: Hotel/Motel Medical: Hospital/Clinics	302.86 per room 0.86 per square foot
Commercial: Office Retail Restaurant/Lounge Industrial/Manufacturing Leisure/Outdoors Institutions: Church School/College Government/Public Bldg.	0.26 per square foot 0.37 per square foot 1.54 per square foot 0.07 per square foot 0.43 per square foot 0.28 per square foot 1.73 per square foot 0.45 per square foot

**Sec. 20. Incorporation, Conflict, and Severability.**

- (a) It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

- (b) Florida Statutes, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
- (c) If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

**Sec. 21. Effective Date.**

This ordinance shall take effect immediately upon adoption by the Marco Island City Council.

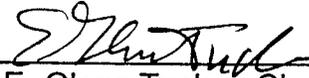
Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 6<sup>th</sup> day of May, 2002.

Attest:

CITY OF MARCO ISLAND, FLORIDA

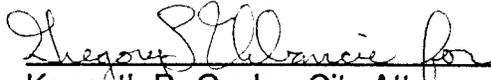
  
\_\_\_\_\_

A. William Moss  
City Manager/City Clerk

BY:   
\_\_\_\_\_

E. Glenn Tucker, Chairman

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_

Kenneth B. Cuyler, City Attorney