

CITY OF MARCO ISLAND
ORDINANCE NO. 98-21

AN ORDINANCE TO ADOPT A CITY OF MARCO ISLAND COMMUNITY PARK AND RECREATION IMPACT FEE; PROVIDING DEFINITION; PROVIDING FINDINGS; ADOPTING STUDY ENTITLED "PARKS AND RECREATIONAL FACILITIES IMPACT STUDY, COLLIER COUNTY, FLORIDA, 1995"; PROVIDING FOR IMPACT FEE PAYMENT; PROVIDING ALTERNATE COLLECTION METHOD; PROVIDING FOR THE RIGHT OF A HEARING; PROVIDING FOR THE USE OF MONIES; PROVIDING FOR INCORPORATION IN THE CODE OF LAWS AND ORDINANCES, 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, it is determined and declared that the impact of construction and future growth upon the parks and recreational facilities should contribute its fair share to the cost of improvements and additions to the City park system that are required to accommodate the use of such parks and recreational facilities by such growth, and

WHEREAS, implementation of impact fees on new construction should contribute its fair share of the costs of improvements and additions to the City park system; and

WHEREAS, Collier County, through Ordinance No. 91-39 and No. 96-19, said Ordinances Amending Collier County Ordinance No. 88-96, Relating to the Collier County Parks and Recreational Facilities Impact Fee Ordinance, provided for the imposition of a community park impact fee; and

WHEREAS, Collier County has been collecting a community park impact fee attributable to new construction for the Marco Island Community Park District since 1996; and

WHEREAS, the City of Marco Island was incorporated on August 27, 1997; and

WHEREAS, the Board of Collier County Commissioners has determined that it intends to amend this ordinance to no longer require the collection of a community park impact fee for the Marco Island Community District boundaries as provided in Section 74-83, Collier County Code of Ordinances; and

WHEREAS, the City Council of the City of Marco Island desires to replace the Collier County community park impact fee with the City of Marco Island community park impact fee.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MARCO ISLAND, FLORIDA

SEC. 1. FINDINGS AND PURPOSE.

The City Council of the City of Marco Island does hereby find the following facts:

- (1) Construction and future growth that impact park and recreational facilities should contribute its fair share to the cost of improvements and additions to the City park system that are required to accommodate the use of such parks and recreational facilities by such growth.
- (2) Implementation of the impact fee to require construction to contribute its fair share to the cost of improvements and additions to the City park system is an integral and vital element of the regulatory plan of growth management incorporated in the Marco Island Master Plan.
- (3) The standard of service for the City park system, determined by Collier County through the "Impact Fees for Parks and Recreation Facilities for Collier County, Florida, 1991 Update", prepared by Henderson Young & Co., (March 13, 1991, with revisions: March 22, 1991, and any subsequent updates adopted by December 7, 1998) is hereby accepted, approved, and adopted by the City and found to be in conformity with the Marco Island Master Plan.
- (4) Capital planning is an evolving process and the standard for service for the City park system constitutes a projection of anticipated need for parks and recreational 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 City

park system and the impact fee imposed be reviewed and adjusted periodically to insure that parks and recreational facilities impact fees are imposed equitably and lawfully, based upon actual and anticipated growth at the time of their imposition.

- (5) The imposition of a community park impact fee is to provide a source of revenue to fund the construction or improvement of the City park system necessitated by growth as delineated in the capital improvement budget and the Marco Island Master Plan.
- (6) City Council specifically finds that community parks within the City provide a real and substantial benefit to all residents of the City.
- (7) This section shall not be construed to permit the collection of impact fees in excess of the amount reasonably anticipated to offset the demand on the City park system generated by impact construction occurring subsequent to the effective date of this ordinance.
- (8) The revenue derived from the impact fee shall be utilized only for the acquisition of improvements and additions to the City park system, which are necessitated by the impact of new construction.

SEC. 2. DEFINITIONS.

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

Accessory building or structure means a detached, subordinate structure, the use of which is clearly indicated 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.

Alternative community park impact fee means any alternative fee calculated by the applicant and approved by the City Council pursuant to Section 8.

Alternative parks and recreational impact fee study means a study prepared by the applicant and submitted to the City Manager pursuant to Section 8.

Apartment means a rental dwelling unit located within the same building as other dwelling units.

Applicant means the person who applies for a building permit.

Building means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons, chattels, or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

Building permit means an official document or certificate issued by the authority having jurisdiction, authorizing the construction or siting of any building. For purposes of this article, the term "building permit" shall also include tie-down permits for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

Community park means a park and recreational activity designed to serve the needs of the citizens of Marco Island, its visitors, and the various neighborhoods constituting a community, including recreational centers with programs and facilities for all age groups.

Community park impact fee means the fee imposed by the City pursuant to Section 5, or, if applicable, the alternative community park impact fee.

Condominium means a single-family or time-sharing ownership unit that has at least one other similar unit within the same building structure. The term "condominium" includes all fee simple or titled multiunit structures, including townhouses and duplexes.

City Manager means the chief administrative officer of the City, appointed by City Council, or the designee of such person.

Dwelling unit means a building or portion of a building designed for or whose primary purpose is for residential occupancy, and which consists of one or more rooms which are arranged, designed or used as living quarters for one or more persons.

Owner means the person holding legal title to the real property upon which parks and recreational facilities impact construction is to occur.

Parks and recreational facilities impact construction means land development construction designed or intended to permit more dwelling units than the existing use of land.

Person means an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

Residential means apartments, condominiums, mobile homes, single-family detached houses or adult congregate living facilities, as that term is defined by F.S. § 400.402.

Single-family detached house means a home on an individual lot.

SEC. 3. ADOPTION OF STUDY AND COMPREHENSIVE PLAN.

City Council hereby adopts and incorporates, by reference, the study entitled "Impact Fees for Parks and Recreational Facilities for Collier County, Florida" and the "Impact Fees for Parks and Recreation Facilities for Collier County, Florida, 1991 Update", prepared by Henderson Young & Co., (March 13, 1991, with revisions: March 22, 1991, and any subsequent updates adopted by December 7, 1998), particularly the assumptions, conclusions, and findings in such studies and as to the determination of anticipated costs of additions to the park system required to accommodate growth. City Council further incorporates, by reference, the City of Marco Island Master Plan and any amendments thereto as it relates to the improvements and additions to the City park system.

SEC. 4. EXEMPTIONS.

The following shall be exempted from the impact fees:

- (1) Alterations or expansion of an existing dwelling unit where no additional dwelling units are created.
- (2) The construction of accessory buildings or structures which will not create additional dwelling units.
- (3) The replacement of a dwelling unit where no additional dwelling units are created.

SEC. 5. PAYMENT.

(a) Except as otherwise provided in this article, prior to the issuance of a building permit for a parks and recreational facilities impact construction, an applicant shall pay the community park impact fee as set forth in Section 9.

(b) The obligation for payment of the community park impact fee shall run with the land.

(c) In the event that a building permit issued for a parks and recreational facilities impact construction expires prior to completion of construction for which it was issued, the applicant may, within ninety (90) days of the expiration of the building permit, apply for a refund of the community park

impact fee. Failure to timely apply for a refund of the community park impact fee shall waive any right to refund.

- (1) The application for refund shall be filed with the Chief of Building Services and shall contain the name and address of the applicant; the location of the property which was the subject of the building permit; the date the community park impact fee was paid; a copy of the receipt of payment for the impact fee; and the date the building permit was issued and the date of expiration.
- (2) After verifying that the building permit has expired and that the construction has not been completed, the City Manager shall refund the community park impact fee paid for such construction.
- (3) The building permit which is subsequently issued on the same property which was the subject of a refund shall pay the community park impact fee as required by Section 5.

SEC. 6. 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 construction of an accessory building if the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory building results in a land use determined to increase the number of dwelling units. The impact fee imposed shall be upon each additional dwelling unit created by the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory building.

SEC. 7. USE OF MONIES.

(a) A separate account for the community park impact fees shall be maintained.

(b) The monies deposited in the community park impact fee account shall be used solely for the purpose of providing growth-necessitated capital improvements and additions to the community parks, including, but not limited to:

- (1) Design and construction plan preparation;
- (2) Permitting and fees;
- (3) Land and materials acquisition, including any costs of acquisition or condemnation;

- (4) Construction and design of improvements and additions to community parks;
- (5) Design and construction of new drainage facilities required by the construction of improvements and additions to community parks;
- (6) Relocating utilities required by the construction of improvements and additions to community parks;
- (7) Landscaping;
- (8) Construction management and inspection;
- (9) Surveying, soils and material testing;
- (10) Acquisition of capital equipment for community parks;
- (11) Repayment of monies transferred or borrowed from any budgetary fund of the City subsequent to the adoption of the ordinance from which this division was derived, which were used to fund growth-impacted improvements or additions as herein provided;
- (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 community parks subsequent to the adoption of the ordinance from which this division was derived;
- (13) Reimbursement of excess community park impact fees due an applicant pursuant to Section 5;
- (14) Design and construction of roadway improvements required by community park facilities; and
- (15) To the extent provided by law, pay for the costs incurred in the preparation of any update to the impact fee study and any amendments or supplements.

(c) Funds deposited in the community park impact fee account shall not be used for any expenditure that would be classified as maintenance or repair expense.

(d) Funds on deposit which are not immediately necessary for expenditure shall be invested by the City. All income derived from such investments shall be deposited in the community park impact fee account and used as provided herein.

(e) The community park impact fee collected pursuant to this division 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 fees were paid. Refunds shall be made only in accordance with the following procedure:

- (1) The then current owner must 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 community park impact fee.
- (2) The petition for refund shall be submitted to the City Manager and 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 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.

SEC. 8. ALTERNATIVE FEE CALCULATION.

(a) In the event an applicant believes that the impact to community parks resulting from his parks and recreational facilities impact construction is less than the fee established in Section 9, such applicant may, prior to issuance of a building permit for such parks and recreational facilities impact construction, submit a calculation of an alternative community park impact fee to the office of

the City Manager pursuant to the provisions of this section. Upon receipt of the alternative community park 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 community park impact fee and shall provide the applicant written notice of the time and place of the hearing.

(b) The alternative community park 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 database 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 parks and recreational facilities impact construction project submitted, during its approval process, an alternative parks and recreational facilities impact study which complied with the criteria required by this section, and if such study is determined by the City Council to be current, the parks and recreational impact of such previously approved parks and recreational facilities impact construction shall be presumed to be as described in the prior study. In such circumstances, an alternative community park impact fee shall be established reflecting the impact described in the prior study. There shall be a rebuttable presumption that an alternative parks and recreational facility 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 community park impact fee complies with the requirements of this section and that the alternative community park impact fee was calculated by the use of a generally accepted methodology, the alternative community park impact fee shall be paid in lieu of the fee set forth in Section 9.

(e) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative community park impact fee does not comply with the requirements of this section or that the alternative community park impact fee was not calculated by the use of a generally accepted methodology, then the City shall provide to the applicant by certified mail, return receipt requested, written notification of the rejection of the alternative community park impact fee and the reason therefor.

(f) The decision of the City Council shall be in writing.

(g) Any applicant or owner who submits a proposed alternative community park 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 community park impact fee pursuant to Section 9. Said payment shall be deemed paid under protest and shall not be construed as a waiver of any rights of review. Any difference between the amount paid and the amount due, as determined by the board, shall be refunded to the applicant or owner.

SEC. 9. IMPACT FEE RATES.

(a) All parks and recreational facilities impact construction occurring within the City of Marco Island shall require the payment of a community park impact fee of \$399.00 per dwelling unit.

SEC. 10. PENALTIES.

If any person fails or refuses to obey or comply with or violates any of the provisions of this Ordinance, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the County jail, or both, in the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinctive offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

Further, nothing in this Section shall be construed to prohibit the City from prosecuting any violation of this Ordinance by means of a Code Enforcement Board established pursuant to the authority of Chapter 162, Florida Statutes, and City Ordinance No. 98-4.

All remedies and penalties provided for in this Section shall be cumulative and independently available to the City and the City shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

SEC. 11. 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 re-lettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.

(b) All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, 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) In the event this Ordinance conflicts with any other Ordinance of the City of Marco Island or other applicable law, the more restrictive shall apply. If any phrase or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

SEC. 12. EFFECTIVE DATE

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

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 4th day of January, 1999.

Attest:

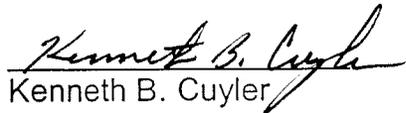
CITY OF MARCO ISLAND, FLORIDA



A. William Moss
City Manager/City Clerk

BY: 
Chairman

Approved as to form and
legal sufficiency:


Kenneth B. Cuyler

Naples Daily News
Naples, FL 34102

Affidavit of Publication
Naples Daily News

CITY OF MARCO ISLAND
ATT: DEE PHILLIPS
950 N COLLIER BLVD #308
MARCO ISLAND FL 34145

REFERENCE: 054361
57797477 98-21 SECOND READING

State of Florida
County of Collier

Before the undersigned authority, personally appeared John Taylor, who on oath says that he serves as Assistant Controller of the Naples Daily News, a daily newspaper published at Naples, in Collier County, Florida: that the attached copy of advertising was published in said newspaper on dates listed.

Affiant further says that the said Naples Daily News is a newspaper published at Naples, in said Collier County, Florida, and that the said newspaper has heretofore been continuously published in said Collier County, Florida, each day and has been entered as second class mail matter at the post office in Naples, in said Collier County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

PUBLISHED ON: 12/18

AD SPACE: 49.000 INCH
FILED ON: 12/18/98

Signature of Affiant

Sworn to and Subscribed before me this 18th day of December 1998

Personally known by me



98-21
SECOND READING &
PUBLIC HEARING
ORDINANCE NO. 98-21
CITY OF
MARCO ISLAND

The City Council of Marco Island, meeting in regular session at 6:00 p.m., on January 4, 1999, at the Marco Island YMCA, 1010 Sand Hill Street, Marco Island, Florida, will consider:

AN ORDINANCE TO ADOPT A CITY OF MARCO ISLAND COMMUNITY PARK AND RECREATION IMPACT FEE; PROVIDING DEFINITION; PROVIDING FINDINGS; ADOPTING STUDY ENTITLED "PARKS AND RECREATIONAL FACILITIES IMPACT STUDY COLLIER COUNTY, FLORIDA, 1995"; PROVIDING FOR IMPACT FEE PAYMENT; PROVIDING ALTERNATE COLLECTION METHOD; PROVIDING FOR THE RIGHT OF A HEARING; PROVIDING FOR THE USE OF MONIES; PROVIDING FOR INCORPORATION IN THE CODE OF LAWS AND ORDINANCES; CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Members of the Public are invited to make oral or written comments in regards to this Ordinance.
Dec. 18 No. 1326894