



Council Communication

To: Mayor and Village Council

Through: Seth Lawless, Village Manager

From: Roget V. Bryan, Village Attorney
Mary Swaney, Public Information Officer

Date: October 13, 2016

SUBJECT: **SECOND READING, ORDINANCE AMENDING IMPACT FEES TO ESTABLISH GENERAL GOVERNMENT IMPACT FEE**

Background:

Florida Statute 163.31901, the “Florida Impact Fee Act”, provides for local governments to use impact fees as a source of revenue to fund infrastructure necessitated by new growth. Among the stipulations of the statute are the requirements that the local government base the impact fee on recent data, provide for accounting and reporting of impact fee collections and expenditures, and provide a 90-day notice before the effective date of a new or increased impact fee.

Islamorada, Village of Islands (the “Village”) collects impact fees as a condition for issuance of a building permit for new development. The Village Code of Ordinances (the “Code”) addresses impact fees in Division 7 of the Land Development Regulations, providing definitions and regulations for Village impact fees. The Code stipulates that *Village council action to establish or increase any impact fee shall be taken only by ordinance or resolution containing findings that demonstrate the basis for calculating the fee.*

Policy 9-1.1.1 of the Village’s Comprehensive Plan states that the Village shall consider performance criteria as well as legal and equitable impact fees, where appropriate, to ensure that new developments provide a sufficient level of public facilities and services in advance of development to cover the costs of such facilities and services where the demand is specifically attributable to the new development. Division 4.6, “Impact Fees” of Article 4, Chapter 9.5 of the Village Code of Ordinances (Ordinance 02-06) was passed and adopted by the Village Council on second reading on January 24, 2002. This Ordinance established the following impact fees: parks and recreation, drainage, police, fire/EMS, transportation improvement, public works, and public art and cultural events. In 2004, the Village contracted for a study to provide a basis for establishing base rates for Public Safety (including Fire/Rescue and Police Protection), Parks & Recreation and Roads.

As a standard, impact fee studies to demonstrate the basis for calculating such fees are recommended every four (4) to seven (7) years. In 2015, through RFP 15-04, the Village selected

TischlerBise Fiscal, Economic & Planning Consultants (the “Consultant”) to conduct an evaluation and update to existing impact fee data. Following approval of the Agreement with the Consultant by the Village Council through the adoption of Resolution No. 15-05-44, Village staff worked with the consultant to provide necessary data and information to assist the Consultant in the impact fee evaluation and update.

After conducting complete data collection and a comprehensive analysis, the Consultant and Village staff provided public presentations of drafts of the Impact Fee Study during Village Council meetings on March 17, 2016, April 28, 2016, May 12, 2016 and June 30, 2016. On June 30, 2016, the Village Council approved the final Impact Fee Study dated June 17, 2016 (the 2016 Impact Fee Study).

In addition to calculating updated Parks and Recreation Impact Fees and Fire Impact Fees, the 2016 Impact Fee Study demonstrates the basis of a General Government fee to be expended to build approximately 600 square feet of general government space in the next eight (8) years, which is necessary to maintain the current level of service to Village residents and property owners.

First reading of the proposed ordinance amendment to establish the General Government Impact Fee was heard by the Village Council on September 22, 2016. At that meeting, the Village Council voted unanimously (5-0) to approve the proposed ordinance amendment on first reading.

Analysis:

An amendment to the Impact Fee Ordinance No. 02-06, as codified in Chapter 30, Article IV, Division 7 of the Village Code has been drafted for Village Council approval. This amendment will establish the General Government Impact Fee supported by the 2016 Impact Fee Study. Neither removal of nor changes to previously established fees are proposed in the amendment in order to preserve the Village’s ability to collect those fees without further amendment to the Code, if a basis to do so is established in the future.

The requisite notice of hearing to adopt the new General Government Impact Fee was published on July 29, 2016. The publication date would allow for the effective date of the General Government Fee and its inclusion in the Impact Fee Schedule to be implemented upon final approval of the Ordinance by the Florida Department of Economic Opportunity (“DEO”).

Staff Impact:

Following adoption of the proposed ordinance amendment, staff would prepare a resolution updating the Impact Fee Schedule for Village Council approval.

Budget Impact:

There is no budget impact associated with creation of the General Government Impact Fee in the Village Code. However, a budget impact would be associated with adoption of the new Impact Fee Schedule to be proposed in February 2017.

Recommendation:

It is recommended that the Village Council pass and adopt the proposed ordinance amendment on second reading to create the General Government Impact Fee.

ORDINANCE NO.

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS”, ARTICLE IV “ADMINISTRATIVE PROCEDURES”; DIVISION 7, “IMPACT FEES” OF THE VILLAGE CODE OF ORDINANCES TO PROVIDE FOR REVISION OF IMPACT FEES FOR FIRE/EMS, PARKS AND RECREATION AND TRANSPORTATION IMPROVEMENT; AMENDING SECTION 30-632 TO CREATE A GENERAL GOVERNMENT IMPACT FEE CATEGORY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE VILLAGE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

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

WHEREAS, Florida Statute 163.31901, the “Florida Impact Fee Act”, provides for local governments to use impact fees as a source of revenue to fund infrastructure necessitated by new growth; and

WHEREAS, since 2002, Islamorada, Village of Islands (the “Village”) has used impact fees as a funding source for growth-related capital improvements for various facilities; and

WHEREAS, in 2015, the Village Council of Islamorada, Village of Islands (the “Village Council”) retained TischlerBise Fiscal, Economic & Planning Consultants (“TischlerBise”) to conduct an evaluation of and update to the Village’s existing impact fee data; and

WHEREAS, TischlerBise has prepared and presented to the Village Council a report titled “Impact Fee Study” dated June 17, 2016 (the “Report”) which establishes the proportionate share of new development’s impacts on the public facilities for which impact fees are collected pursuant to this Ordinance; and

WHEREAS, the Report has been presented to and reviewed by the Village Council which has determined that “(1) impact fees are necessary to offset the costs to the Village associated with meeting the necessary public service and facility demand created by projected new residential and non-residential development; (2) that the amount of impact fees bears a reasonable relationship to the burden imposed upon the Village to provide the new public facilities addressed in the Report to new development; (3) that the expenditure of impact fees pursuant to the terms of this Ordinance will result in a beneficial use to such new development reasonably related to the impact fees, per dwelling unit, by type and per increment of non-residential development; (4) that an “essential nexus” exists between the projected new development and the need for additional public facilities to be funded via the development fees; and (5) that the amount of the development fees is “roughly proportional” to the fair share of the additional public facilities needed to provide adequate service to new development; and

WHEREAS, in addition to calculating updated Parks and Recreation Impact Fees and Fire Impact Fees, the 2016 Impact Fee Study demonstrates the basis for a General Government fee to be expended to build approximately 600 square feet of general government space in the next eight (8) years, which is necessary to maintain the current level of service to Village residents and property owners; and

WHEREAS, in accordance with Section 166.31801, Florida Statutes, the Village Council has determined that:

- (a) the Report and the impact fee recommended therein, are based on the most recent and localized data;
- (b) this Ordinance provides procedures for accounting and reporting of impact fee collections and expenditures in order to assure compliance with applicable legal standards;
- (c) this Ordinance provides for separate accounting funds for each public facility for which an impact fee is collected;
- (d) administrative fees charged pursuant to this Ordinance for the collection of impact fees are limited to actual costs; and
- (e) this Ordinance requires audits of the Village's financial statements to include an affidavit of the Village's chief financial officer stating that the requirements; and

WHEREAS, the adoption of this Ordinance incorporates amendments to Chapter 30, Article IV, Division 7 of the Village Code that will establish the General Government Impact Fee supported by the 2016 Impact Fee Study; and

WHEREAS, the impact fees assessed pursuant to this Ordinance are necessary to ensure the public health, safety and welfare of the Village and its residents; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village and complies with applicable State laws and rules.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Definitions.** Chapter 30, "Land Development Regulations" Article IV, "Administrative Procedures", Division 7 "Impact Fees" of the Village Code is hereby amended to read as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as striketrough
---	--

* * * * *

DIVISION 7. - IMPACT FEES

Sec. 30-361. - Authority; intent and purpose.

This division is enacted pursuant to the authority granted to local governments by section 2(b), article VIII, of the Florida Constitution, F.S. ch. 166, and F.S. §§ 163.3161—163.3244. This division is enacted for the purpose of requiring that new development pay for its fair share of public facilities through the imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the village for public facilities and services that serve such development.

Sec. 30-362. - Applicability.

Unless expressly excepted or exempted, this division applies to all fees which may be imposed by the village to finance capital facilities, the need for which is created by new development, including:

- (1) Park and recreation fees;
- (2) Drainage fees;
- (3) Police fees;
- (4) Fire/EMS fees;
- (5) Transportation improvement fees;
- (6) Public works fees; ~~and~~
- (7) Public art and cultural events fees; and
- (8) General Government fees.

Sec. 30-363. - Exemptions.

This division does not apply to fees authorized outside of this division, including but not limited to:

- (1) Taxes and special assessments;
- (2) Fees for processing development applications;
- (3) Fees for enforcement of or inspections pursuant to regulatory ordinances;
- (4) Fees for utility connection or utility impact fees;
- (5) Fees collected under development agreements, other than impact fees;
- (6) Fees imposed pursuant to a reimbursement agreement between the village and a property owner for that portion of the cost of a public facility paid for by the property owner which exceeds the need for the public facility attributable to, reasonably related to, and roughly proportional to the development;
- (7) Fees to mitigate impacts on the environment;
- (8) Fees imposed, levied, or collected by other governmental agencies including subdivisions of the state and federal government;
- (9) Stormwater utility fees which may be authorized by Village Code provisions outside of this division;

(10) Wastewater utility fees which may be authorized by Village Code provisions outside of this division;

~~(10)~~ (11) Development for which a certificate of occupancy was issued prior to December 31, 2002;
or

~~(11)~~ (12) Development exempted by an agreement with the village, which was approved prior to the adoption of this division.

Sec. 30-364. - Definitions.

When used in this division, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Benefit area means the geographic area within which impact fees are collected and expended for a particular type of capital improvement serving development projects within such area.

Calculate means to determine the amount of impact fees to be imposed on a particular development project and includes an individualized determination showing a reasonable, and roughly proportional, relationship between: (1) the fee's use and the type of development project on which the fee is imposed; (2) the need for the public facility or service and the type of development project on which the fee is imposed; and (3) the amount of the fee and the cost of the portion of the public facility or service attributable to the development on which the fee is imposed.

Capital improvement means land or facilities for the collection and disposal of stormwater; for flood control purposes; for purposes of transportation and transit, including, without limitation, streets, street lighting and traffic control devices and supporting improvements, roads, overpasses, bridges, and related facilities; for parks and recreational improvements; for public safety, including police facilities; for public art; for public buildings of all kinds; and for any other public works capital project identified in the village's capital improvements plan. Capital improvement also includes design, engineering, inspection, testing, planning, legal, land acquisition, and all other costs associated with construction of a public facility.

Capital improvements plan means the five-year plan for capital improvements adopted annually by the village council, describing the approximate location, size, time of availability and estimated cost of capital improvement projects and identifying sources of funding for capital improvement projects.

Capital improvements project list means the list describing the approximate location, size, time of availability and estimated cost of each capital improvement to be funded from a particular impact fee account.

Collection means the time at which the impact fee is actually paid to the village.

Commitment means earmarking impact fees to fund or partially fund capital improvements serving new development projects.

Density for purposes of this division refers to the measurement of residential uses.

Dwelling unit means one or more rooms in a building or a portion of a room, designed or intended to be used, or actually used, for occupancy by one family for living and sleeping quarters and containing one kitchen only, including a mobile home, but not hotel or motel units.

Impact fee means a monetary exaction, adopted by the village pursuant to section 30-366 at a specified rate and imposed pursuant to this division, as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the village's cost or repaying costs previously expended from other village funds for capital improvements, and as further defined by section 30-362 and section 30-363.

Impose means to determine that a particular development project is subject to the collection of impact fees as a condition of development approval.

Intensity for purposes of this division refers to the measurement of nonresidential uses.

New development or development project means any project undertaken for the purpose of development, including, without limitation, a project involving the issuance of a permit for construction, reconstruction, or change of use, but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, or improve an existing structure, which does not change the density or intensity of use, nor the rebuilding of a structure destroyed or damaged by an act of God, nor the replacement of one mobile home with another on the same pad if no dwelling unit is added, nor the replacement of one single-family residence with another equivalent single-family residence.

Nonresidential development project means all development other than residential development projects.

Residential development project means any development undertaken to create a new dwelling unit.

Sec. 30-365. - Imposition, calculation and collection of fees.

- (a) The village may only impose impact fees as a condition of approval of new development projects as provided in this division.
- (b) No later than July 2002, and for each year thereafter, the base fee amount of each impact fee for residential and for nonresidential development, for each type of public facility or service funded by impact fees, shall be ~~calculated~~ reviewed annually and adopted by village council resolution. When the village council determines that it is appropriate to the particular public facility or service, the fee amount may be calculated, imposed and expended by benefit area. Until the village adopts the base fees as provided by this subsection, impact fees in the amount as established by the county under the provisions of article X of the Monroe County Land Development Regulations, as existing as of the date of incorporation of the village, shall continue to be collected and expended as provided therein.
- (c) After an individualized determination that each impact fee for a development project has been calculated as provided in this division, impact fees shall be imposed prior to issuance of any building permit.
- (d) Impact fees shall be collected by the village manager at the time and as a condition for issuance of a building permit.
- (e) An administrative fee, in the amount of three percent of the impact fee imposed on a development project, shall be collected from that development project with, and in addition to, the impact fee for the purpose of defraying the village's cost of administering the impact fee program.

Sec. 30-366. - Notice and hearing required for amending fees.

- (a) Prior to amending any particular impact fee, the village council shall hold a public hearing.
- (b) Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be published as required for the adoption of a general ordinance pursuant to F.S. § 166.041.
- (c) At least ten days prior to the public hearing, the village shall make available to the public data showing the amount or the estimated amount of the impact fee and a summary of the basis for the calculation of the impact fee amount.
- (d) Village council action to establish or increase any impact fee shall be taken only by ordinance or resolution containing findings that demonstrate the basis for calculating the fee.

Sec. 30-367. - Independent impact analysis.

- (a) Effective immediately, a developer may choose to use an independent impact analysis to compute the impact fee due as a result of a development.
- (b) The developer shall be responsible for the preparation of the draft independent impact analysis and the village manager may accept, reject, or modify the draft analysis.
- (c) The village manager shall approve the person who prepares the draft independent impact analysis on the basis of the person's professional training and experience in preparing development impact analyses. The independent impact analysis shall follow standard methodologies and format and be approved by the village manager. The village manager may publish acceptable methodologies and formats for impact analyses. Prior to submission of the draft independent impact analysis, the developer shall meet with the village manager to review the requirements for preparing draft independent impact analyses.

Sec. 30-368. - Impact fee accounts.

- (a) The village shall establish an appropriate accounting mechanism for ensuring that the fees collected are appropriately earmarked and spent for each type of capital improvement for which an impact fee is imposed. Where the village council has designated benefit areas, there shall be a separate impact fee accounting for each benefit area. The impact fees collected shall be deposited in each such account according to type of improvement (and benefit area if relevant). The funds of each impact fee account shall not be commingled with other funds of the village. Any account previously established for the deposit of funds that would have been developer impact fees under this division shall be deemed an impact fee account for the purposes of this division.
- (b) Any impact fee funds on deposit but not immediately necessary for expenditure shall be placed in interest-bearing assets, and the accumulated interest shall become part of the impact fee account.

Sec. 30-369. - Use of proceeds.

Impact fees may be expended only for the type of capital improvements for which they were imposed, calculated, and collected and according to the time limits and procedures established in this division. If impact fees were calculated and collected by benefit area, then the fees may be expended only in the benefit area in which they were collected. Impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the village to finance such improvements.

Sec. 30-370. - Refunds.

- (a) Upon application of the property owner in the form provided by the village, with supporting documentation, the village shall refund that portion of any impact fee which has been on deposit over six years and which is unexpended and uncommitted, except as described in subsection (b) of this section. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects.
- (b) If fees in any impact fee account are unexpended or uncommitted during the sixth year, the fees are exempt from subsection (a) of this section if the village council makes the following findings:
 - (1) A need for the capital improvement still exists;
 - (2) The fees will be used for an identified purpose within two years; and
 - (3) The purpose for which the fees will be used is substantially similar to the purpose for which the fees were collected.
- (c) The village may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner on the same or other property, or otherwise by agreement with the owner.

Sec. 30-371. - Statute of limitations.

Any judicial action or proceeding to challenge, review, set aside, or annul the reasonableness, legality, or validity of any impact fee must be filed and service of process effected within 90 days following the date of imposition of the fee or the final determination of the village council, whichever is later.

Sec. 30-372. - Amendment procedures.

Prior to the village council's adoption of the budget and revisions to the capital improvements project list, the village manager shall report at least once each year to the village council with:

- (1) Recommendations for amendments to this division, if any;
- (2) Proposals for changes to the capital improvements project list, identifying capital improvements to be funded in whole or in part by impact fees, if any;
- (3) Proposals for changes in the boundaries of benefit areas, if any; and
- (4) Proposals for changes to impact fee rates and schedules, if any.

Sec. 30-373. - Credits.

- (a) A property owner who dedicates land or agrees to participate in an assessment district or otherwise contributes funds for capital improvements as defined in this division may be eligible for a credit for such contribution against the impact fee otherwise due.
- (b) The village manager shall determine:
 - (1) The value of the developer contribution;
 - (2) Whether the contribution meets capital improvement needs for which the particular impact fee has been imposed; and
 - (3) Whether the contribution will substitute or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds.

In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee. The developer may appeal the determination of the value of the credit to a qualified and independent property appraiser, whose identity shall be determined by the agreement of the developer and the village manager.

- (c) Any application for credit must be submitted on forms provided by the village before development project approval. The application shall contain a declaration under oath of those facts that qualify the property owner for the credit, accompanied by the relevant documentary evidence.

Secs. 30-374—30-390. - Reserved

* * * * *

Section 3. Repeal of Conflicting Provisions. The provisions of the Village Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 6. Approval by the Florida Department of Economic Opportunity. The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the

Florida Department of Economic Opportunity (DEO) for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. **Effective Date.** This Ordinance shall not be effective until after final approval by the Florida Department of Economic Opportunity (DEO).

The foregoing Ordinance was offered by Councilman Mike Forster, who moved for its adoption on second reading. This motion was seconded by Councilman Chris Sante, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis	YES
Vice Mayor Jim Mooney	YES
Councilman Mike Forster	YES
Councilman Chris Sante	YES
Councilman Dennis Ward	YES

PASSED on the first reading this this 22nd day of September, 2016.

The foregoing Ordinance was offered by _____, who moved for its adoption on second reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis	_____
Vice Mayor Jim Mooney	_____
Councilman Mike Forster	_____
Councilman Chris Sante	_____
Councilman Dennis Ward	_____

PASSED AND ADOPTED on the second reading this ___ day of _____, 2016.

DEB GILLIS, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY