

## **Chapter 11B PUNTA GORDA ECONOMIC DEVELOPMENT INCENTIVES**

### **Sec. 11B-1. Short Title.**

This Chapter shall be known and cited as the "Punta Gorda Economic Development Incentives."

### **Sec. 11B-2. Findings.**

The City Council of Punta Gorda, Florida (hereinafter "Council") hereby finds and declares that:

- (a) Punta Gorda, Florida, (hereinafter "City") has adopted updated impact fees and capacity fees established in Chapters 11 and 17, Code of Punta Gorda, Florida, to require new development to pay a proportionate share of the average public facility costs related to the provision of capital facilities needed to accommodate the demand for such facilities generated by new development. The City also has in effect Connection Fees required for connection to the City's water and wastewater systems in order to fund other capital facilities in those systems.
- (b) The Comprehensive Plan for Punta Gorda, as adopted and amended by the Council and census and population studies predict that growth will continue and will create significant demands for public facilities needed to accommodate new development.
- (c) The State of Florida has identified certain businesses as providing economic benefit to the state and has targeted such certain businesses for tax refund benefits.
- (d) The "Punta Gorda Economic Development Strategy" prepared by The Chesapeake Group, Inc., dated July, 2007, identifies the need for additional non-residential development within the City to further the economic development of the City.
- (e) In balancing the need for New Development to contribute to funding public facilities needed to accommodate New Development and the need for additional economic development in the City, the Council has determined that it is in the public interest to encourage the provision of economic development by providing the economic development incentives established herein.
- (f) The Council has reviewed the list of Targeted Industries identified in the State of Florida Qualified Target Industry Tax Refund Program and the additional types of non-residential development identified in the "Punta Gorda Economic Development Strategy" prepared by The Chesapeake Group, Inc., dated July, 2007. Based on this information and the local circumstances and economic conditions, the Council has identified certain types of development that provide significant economic benefit to the City of Punta Gorda. The Council, by separate resolution, shall determine the specific types of development that may qualify for the incentives authorized pursuant to this Chapter.

- (g) The City is providing for installment payment of City-imposed Impact Fees and Connection Fees for Qualified Economic Development approved by the Council. This program provides only for installment payment of the City-imposed Impact Fees due, and Connection Fees due if applicable, not for the reduction or waiver of City-imposed Impact Fees and Connection Fees. Installment payment of City-imposed Impact Fees, and water and wastewater Connection Fees if applicable, is subject to a determination by the Council that the proposed development, or portion thereof, is a qualified economic development significantly benefitting the City's economy and that the City has the financial ability, as determined by the Council, to allow installment payments and, if applicable, to advance Connection Fees due to the proposed development as required by bond covenants.

### **Sec. 11B-3. Authority.**

In creation of the Economic Development Incentive Program, the Council is exercising its Charter home rule powers and its local authority, including police powers, pursuant to Article VII, Sections 1(f), 1(g) and 2(b) of the Florida Constitution; the Municipal Home Rule Powers Act, ch. 166, F.S., as amended; and Section 163.3161 et seq., F.S., as amended. The provisions of this Chapter shall not be construed to limit the scope of the City's power necessary to accomplish these purposes.

### **Sec. 11B-4. Definitions.**

As applied in this Chapter, the following words and terms shall have the following meaning, unless another meaning is clearly intended:

City Imposed Impact Fees shall mean the impact fees imposed by the City of Punta Gorda pursuant to Chapter 11, Code of Punta Gorda, Florida and shall include the water and wastewater system capacity fees imposed by the City of Punta Gorda pursuant to Chapter 17, Code of Punta Gorda, Florida.

City Imposed Connection Fees or Connection Fees shall mean the connection fees, other than water system capacity fees and wastewater system capacity fees, imposed by the City of Punta Gorda pursuant to Chapter 17, Code of Punta Gorda, Florida. City imposed Impact fees as defined in this Chapter are specifically excluded from this definition.

Economic Development Strategy shall mean the "Punta Gorda Economic Development Strategy" prepared by the Chesapeake Group, Inc., dated July, 2007.

New Non-Residential Development shall include the carrying out of any building activity or the making of any material changes in the use of a structure or land that requires the issuance of a Building Permit, as defined in Chapter 11, and includes any building activity or change in the use of a structure that requires an application for water and/or wastewater service under Chapter 17, Code of Punta Gorda, Florida. New Non-residential Development shall exclude Residential Development and Governmental Uses as defined in Chapter 11, Code of Punta Gorda, Florida.

Qualified Economic Development shall mean the types of New Non-residential Development identified as Qualified Economic Development by Resolution of the Council. Such qualified development includes those types of New Non-residential Development which have been determined to be suitable for the City-imposed Impact Fee and/or Connection Fee Installment Payment Program by the Council and generally includes those types of development for which gaps were identified for the City in the Economic Development Strategy and those types of Non-residential Development identified in the State of Florida Qualified Target Industry Tax Refund Program.

**Sec. 11B-5. Applicability.**

The provisions of this Chapter 11B shall be applicable to New Non-residential Development, as defined in this Chapter, on which City-imposed Impact Fees, as defined in this Chapter, and/or City-imposed Connection Fees, as defined in this Chapter, if applicable, are imposed after the effective date of this Chapter.

**Sec. 11B-6. Economic Development Installment Payment Program.**

- (a) Pursuant to the requirements established in this Section and Chapter 11B, the City may provide for installment payment of City-imposed Impact Fees due, and Connection Fees due, if applicable, for any New Non-residential Development which is Qualified Economic Development under this Chapter and which fulfills all other requirements of this Section. Only the City-imposed Impact Fees or Connection Fees due for the portion or portions of the proposed New Non-residential Development that fulfills all requirements of this Chapter may be paid in installments. All remaining City-imposed Impact Fees, and Connection Fees if applicable, shall be paid in accordance with the applicable provisions of the Code of Punta Gorda, Florida. The Council shall by Resolution establish an Economic Development Installment Payment schedule, including the portion of City-imposed Impact Fees, and Connection Fees if applicable, to be paid at the time of building permit issuance, at the time of issuance of certificate of occupancy and remaining payments, including accrued interest, over a period of five (5) years from the date of issuance of certificate of occupancy.
- (b) Any person seeking Economic Development Installment Payment under this Section for proposed New Non-residential Development shall file with the City Manager an application for Economic Development Installment Payment prior to receiving a building permit for the proposed New Non-residential Development. The application shall, at a minimum, include the following:
  - (1) Name and address of the applicant;
  - (2) An up-to-date, complete legal description of the site(s) on which the proposed development is to be located, including the parcel identification number(s) and the street address, if available; and
  - (3) The size of the proposed Non-residential Development and the

proposed use(s) and occupant(s) of the building, with evidence of a minimum one-year lease(s). If the proposed building will house multiple occupants and/or multiple uses, the square footage occupancy and other information shall be provided for each proposed occupant and each proposed use. The NAICS (North American Industry Classification System) category shall be provided for each proposed use(s).

- (c) If the proposed New Non-residential Development meets the requirements for the Economic Development Fee Installment Payment as set forth in this Chapter and the application for installment payment is approved by the Council, the City Manager shall enter into an Economic Development Fee Installment Payment Agreement for each qualifying building, or qualifying portion thereof, and is hereby authorized by the Council to execute such Installment Payment Agreements along with any associated tri-party agreement further defining the repayment obligations of the owner/lessor, applicant, builder and/or developer, as applicable. The recorded Economic Development Fee Installment Payment Agreement shall be accepted by the City in lieu of payment of the approved amount of City-imposed Impact Fees, and Connection Fees if applicable, due at the time of building permit issuance pursuant to Chapters 11 and 17, Code of Punta Gorda, Florida.
- (d) To qualify for Economic Development Fee Installment Payment, the New Non-residential Development and lessee(s) must fulfill at the time of application, and continue to fulfill through the installment payment period, all of the following criteria:
  - (1) In order to be approved for installment payment of City-imposed Impact Fees, the proposed New Non-residential Development, or portion thereof, must be used for a business or industry listed as a Qualified Economic Development in a Resolution approved by the Council.
  - (2) In order to be approved for installment payment of Connection Fees, the proposed New Non-residential Development, or portion thereof, must be used for a business or industry listed as a Qualified Economic Development in a Resolution approved by the Council, and the Council, in its sole discretion, must make a determination that the City has the financial ability to advance the full amount of Connection Fees due on behalf of the proposed development and that the proposed development will provide significant economic benefit to the City.
  - (3) A bond or other sufficient surety in the amount of the City-imposed Impact Fees, and Connection Fees if applicable, to be paid under the Installment Payment Agreement on the proposed building must be provided prior to issuance of a building permit on the proposed structure. This requirement may be waived by the Council upon a showing by the applicant that such bond or other surety is not

reasonably available at the time of application.

- (4) Unless waived by the Council, no more than 5 outstanding Installment Payment Agreements are permitted with an individual owner/lessor or for any building(s) under common ownership. For purposes of this subsection, common ownership shall include ownership by the same person, corporation, firm, entity, partnership, or unincorporated association, or ownership by different corporations, firms, partnerships, entities, or unincorporated associations in which a stockbroker, partner, or associate, or a member of his family owns an interest in such corporation, firm, partnership, entity or unincorporated association.
- (e) Economic Development Installment Payment Agreements. The owner of a Qualified Economic Development building on which City-imposed Impact Fees, and Connection Fees if applicable, are due shall execute an Installment Payment Agreement with the City to participate in the economic incentives authorized by this Chapter. A separate Installment Payment Agreement shall be executed for each qualified building. Applicants are required to enter into an Installment Payment Agreement to participate in installment payments of the City-imposed Impact Fees due, and Connection Fees due if applicable. The Installment Payment Agreement shall be recorded in the real property records of Charlotte County, Florida at no cost to the City and shall run with the land. The Installment Payment Agreement shall include such provisions as are necessary to effectuate the purposes of this Chapter and Section and shall provide for, at a minimum, the following:
- (1) Legal description of the property and the dwelling unit, including the parcel tax identification number and street address;
  - (2) The total amount of the City-imposed Impact Fees due, and Connection Fees due if applicable, on the building, the amount of City-imposed Impact Fees, and Connection Fees if applicable, approved for the installment payment program, the installment payment schedule, and the obligation that the total amount of unpaid City-imposed Impact Fees and Connection Fees shall be paid in full upon any breach of the Installment Payment Agreement by the owner/lessor or upon the failure of the owner/lessor to continue to qualify under the provisions of this Section.
  - (3) The rights and obligations under an Installment Payment Agreement may not be assigned, transferred, credited, devised or otherwise conveyed separate and apart from the subject building and property.
  - (4) Unpaid City-imposed Impact Fees and Connection Fees under an Installment Payment Agreement shall be a lien on the property which lien shall be recorded. The lien may be foreclosed upon in the event of noncompliance with the requirements of this Section and Chapter or in the event of a breach of the Installment Payment Agreement by

owner. The lien shall terminate upon the recording by the City of a release or satisfaction of lien in the public records of Charlotte County, Florida. Such release or satisfaction shall be recorded by the City upon payment in full of the total City-imposed Impact Fees due, and Connection Fees if applicable.

- (5) In the event of a default of the Agreement by the owner and the default is not cured within 30 days after written notice is provided to the owner, the City may, at its sole option, collect the total City-imposed Impact Fees due, including any accrued interest, and total Connection Fees due, including any accrued interest, in default as provided in this Section or bring a civil action to enforce the agreement or declare that the total City-imposed Impact fees including accrued interest, and, if applicable, total Connection Fees including accrued interest, are in default and are immediately due and payable. The City shall be entitled to recover all costs and fees, including attorney's fees and costs, incurred by the City in enforcing the Installment Payment Agreement, plus interest at the maximum statutory rate for judgments calculated on a calendar day basis until paid in full.

(f) Owner Obligations.

- (1) The City-imposed Impact Fees due, and Connection Fees due if applicable, on a Qualified Economic Development building under an Installment Payment Plan shall be a lien on the property until all requirements under this Chapter and the terms of the Installment Payment Agreement(s) related to the qualifying building have been satisfied in full. The owner shall pay to the City Clerk the City-imposed Impact Fees, and Connection Fees if applicable, and any accrued interest due in accordance with the installment payment schedule in the Installment Payment Agreement.
- (2) The owner of a Qualified Economic Development building on which City-imposed Impact Fees, and Connection Fees if applicable, have qualified for installment payment shall annually submit an affidavit of continued compliance with the requirements of this Chapter and the terms of the applicable Installment Payment Agreement. The affidavit must be filed with the City Clerk no later than 30 days after the anniversary of the date of issuance of the certificate of occupancy on the building that is subject to the Installment Payment Agreement. A late fee of \$200.00 shall be paid to the City by the owner if the affidavit is not timely filed. If the owner fails to file the affidavit within three months after the anniversary date of issuance of the certificate of occupancy on the building subject to the Installment Payment Agreement, all unpaid City-imposed Impact Fees, and Connection Fees if applicable, shall become immediately due and payable in full and the City may immediately proceed to collect the remaining City-imposed Impact Fees and Connection fees due.

(g) Repayment.

- (1) All unpaid City-imposed Impact Fees and Connection Fees at the time of building permit issuance for a Qualified Economic Development building shall become due and payable and shall be immediately paid in full to the City upon the occurrence of any failure of the owner to maintain compliance with the requirements of this Chapter and the terms of the applicable Installment Payment Agreement.
- (2) Payment of City-imposed Impact Fees and Connection Fees on an installment payment schedule shall include any accrued interest. Interest on installment payments shall be computed at the rate of five percent per annum, but in no event shall the total accrued interest exceed 50 percent of the total City-imposed Impact Fees and Connection Fees due on the building subject to the Economic Development Installment Payment Agreement.

(Ord. No. 1678-11, <sec> 6, 4-20-11)

**Sec. 11B-7. Collection of Impact Fees and Connection Fees in the Event of Default Under this Chapter.**

Whenever the City determines that there is a default under an Economic Development Installment Payment Agreement or the occurrence of any other condition causing City-imposed Impact Fees and Connection Fees to be due and payable under this Chapter, the City-imposed Impact Fees and Connection Fees due shall be deemed to be delinquent. The City shall proceed to collect the delinquent City-imposed Impact Fees and Connection Fees due as follows:

- (a) The City shall serve, by certified mail, return receipt requested, or by any other then lawful means of delivery, a "notice of City-imposed Impact Fees and Connection Fees due statement" upon the applicant at the property address set forth in the relevant Agreement, and to the owner at such address appearing on the most recent records maintained by the property appraiser of Charlotte County, Florida. Service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner, or by any other evidence of the date that the "notice" was received by the addressee. The "notice of City-imposed Impact Fees and Connection Fees due statement" shall contain a description of the property, the conditions giving rise to the City-imposed Impact Fees and Connection Fees being due, and shall advise the applicant and the owner as follows:
  - (1) The amounts due including the City-imposed Impact Fees and Connection Fees and any accrued interest pursuant to an Impact Fee Installment Payment Agreement;
  - (2) The date that the City-imposed Impact Fees and Connection Fees became due, and that as of that date, the unpaid City-imposed Impact Fees and Connection Fees became subject to a delinquency

fee, and that penalty interest began to accrue on that date, and that such penalty interest will continue to accrue thereafter until all amounts due are paid in full;

- (3) That in the event the City-imposed Impact Fee and the delinquency fee are paid in full within 30 days after receipt of the "notice," the delinquency fee and all penalty interest that would have otherwise accrued will be waived; however, interest accrued under an Impact Fee Installment Payment Agreement will not be waived;
  - (4) That in the event the City-imposed Impact Fees and Connection Fees are not paid in full within 30 days after receipt of the "notice", a lien against the property for which the building permit was secured may be recorded in the official records of Charlotte County, Florida for all amounts then due after approval by Council.
- (b) Upon becoming delinquent, a delinquency fee equal to ten percent of the total remaining City-imposed Impact Fees and Connection Fees due, including interest accrued pursuant to an Impact Fee Installment Payment Agreement shall be assessed. Once delinquent, the total remaining City-imposed Impact Fees and Capacity Fees due, plus the delinquency fee, shall bear interest at the ten applicable statutory rate for final judgments calculated on a calendar day basis, until paid in full.

**Sec. 11B-8. Reporting on and Suspension of Economic Development Impact Fee Incentives.**

- (a) A report shall be prepared and submitted to the Council at least annually identifying the number of Economic Development Impact Fee Installment Payment Agreements approved, the total amount of City-imposed Impact Fees and Connection Fees to be paid under Installment Payment Agreements, and any impact on the timing or provision of capital facilities funded by City-imposed Impact Fees and Connection Fees. This report may be combined with the Annual Report required in Chapter 11, Code of Punta Gorda, Florida.
- (b) Information on the number of Impact Fee Installment Payment Agreements approved each year and the total amount of City-imposed Impact Fees and Connection Fees to be paid under Installment Payment Agreements shall be included in the Annual Report on the City's City-imposed Impact Fees required in Chapter 11. Any additional information on the programs that will assist the Council in evaluating the effectiveness of the economic development incentives established in this Chapter and the effect, if any, on the provision of capital facilities should be included in the Annual Report.
- (c) Should the Council determine that the Economic Development Incentives Program is significantly reducing the City's City-imposed Impact Fee revenue and impairing the provision of capital facilities under the City's

capital improvements program, the Council may, by Resolution, suspend the Economic Development Incentives Program. The suspension shall become effective immediately upon adoption of such Resolution. Applications submitted prior to or on the date of the suspension of the program(s) may be processed by the City, subject to the availability of City funds. Applications submitted after the suspension date will not be accepted by the City.