BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2426-2020

AN ORDINANCE OF THE CITY OF STUART, AMENDING ARTICLE III, SECTION 32-68 ALLOWING FOR THE TRANSFER OF IMPACT FEE CREDITS; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICT CLAUSE; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES

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WHEREAS, the City Commission seeks to provide for regulation and use of development of land so that the new development bears its proportionate share of the cost of the capital expenditures necessary to provide facilities required to mitigate the impacts of the new growth; and

WHEREAS, the City Commission has determined that in certain circumstances impact fees have been paid for units that are no longer in existence; and

WHEREAS, the City Commission believes that providing the opportunity to land owners to transfer these excess impact fees may result in a reduction in housing costs to an extent that the end buyer can receiving the benefit of the savings which would result in attainable housing; and

WHEREAS, the City Commission recognizes that current housing costs for both rentals and home ownership is becoming unattainable and therefore the Commission

desires to provide assistance in those circumstances wherein there are excess impact fee credits due to prior development or payments; and

WHEREAS, the City Commission has determined that the proposed revisions are in the best interests of the general and serve as a public benefit.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: Chapter 32, Planning and Development, of the Code of Ordinances of the City of Stuart is hereby amended at Article III, Impact Fees, by including a new provision to read as follows:

Sec. 32-68. - Exemptions, credits, and deferrals.

(A) Exemptions. The following shall be exempted from the payment of impact fees:

(1) Alteration, expansion or replacement of an existing residential building where no additional living units are created, where the use is not changed, and no additional vehicular trips will be produced over and above that produced by the existing use.

(2) Alteration, remodeling or replacement of an existing nonresidential building or structure where the use is not changed and the square footage and/or parking is not increased.

(3) The construction of accessory buildings or structures that do not create an additional impact on public capital facilities over and above that produced by the principal building or use of the land.

An exemption must be claimed by the fee payer prior to the issuance of a building permit. Any exemption not so claimed shall be deemed waived by the fee payer.

(B) Credits.

(1) All credits must be approved by the city commission.

(2) The value of any donation or dedication of public capital facilities required of the fee payer under a city development order shall be credited against the impact fees otherwise due provided the subject facilities are listed in the adopted capital improvements plan. Credits shall be calculated consistent with F.S. § 380.06(16).

(3) The fee payer will provide the following information to the city manager for a determination of the value of any donation or dedication:

a. An independent property appraisal report prepared by an individual who is both a member of the Appraisal Institute (MAI) and a state-certified general appraiser acceptable to the city manager, containing the following:

1. Purpose of the appraisal.

2. Legal description of property, including a minimum of five years delineation of title.

3. Present use and zoning.

4. Utilities.

5. Type and condition of improvements and special features that may add to or detract from the value of the property.

6. Highest and best use of the property on which the appraisal is based before the acquisition of rights and interests to be acquired and the highest and best use of the remainder after the acquisition when a partial taking is involved. In either instance, if the existing use is not the premises on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is a demand for that use in the market.

7. Before and after valuation as interpreted by state law will be used in partial donations or special benefits to the residue land or improvements.

8. Approaches to value including all applicable approaches to value. If an approach is not considered applicable, the appraiser must state why. All pertinent calculations used in developing the approaches will be shown.

(i) In the market approach, the appraisal report will contain a direct comparison of pertinent comparable sales to the property being appraised. The appraiser must include a statement setting forth his analysis and reasoning for each item of adjustment to comparable sales.

(ii) Where the income (capitalization) approach is used, there must be documentation to support the income, expenses, interest rate, capitalization rate, discount rate, or

any other factors used in the analysis. Where it is determined that the market rental income is different from the existing or contract income, the increase or decrease must be explained and supported by market information.

(iii) Where the cost approach is utilized, the appraisal report must contain the specific source of cost data, remaining economic life, and an explanation of each type of accrued depreciation.

9. Appraisal after value must be supported to the same extent as the appraisal of the before value. This support should include one or more of the following:

(i) Sales comparable to the remainder properties.

(ii) Sales of comparable properties from which there have been similar donations or acquisitions for like usages.

(iii) Development of the income approach on properties which show economic loss or gain as a result of similar acquisition or taking for like usages.

(iv) Public sales of comparable lands by the state or other public agencies.

(v) If the data described in subsections (b)(3)a.9(i) through (iv) of this section are not available the appraisal will so state and give the appraiser's reasoning for his value estimate.

b. The difference between the before and after appraisal will represent the value of property to be acquired including the damages to the remainder property. The appraiser will separately analyze and tabulate the difference showing a reasonable allocation of site improvements and damages.

c. Where two or more of the approaches of value are used, the appraisal will show the correlation of the separate indications of value derived by each approach along with a reasonable explanation for the final conclusion of value. This correlation will be included for both before and after appraisals.

d. All appraisal reports should include identified photographs of the subject property including all principal aboveground improvements or unusual features affecting the value of the property to be taken or damaged.

e. Appraisal reports will contain a survey and sketch or plat of the property showing boundary dimensions, location of improvements and other significant features of the property.

f. Each appraisal report will contain or make reference to the comparable sales which were used in arriving at the fair market value. Comparable sales data must state the date of sale, names of parties to the transaction, consideration paid, financing, conditions of sale and with whom these were verified, the location, total area, type of improvements, appraiser's

estimate of highest and best use at the date of sale, zoning, and any other data pertinent to the analysis and evaluation thereof. If the appraiser is unable to verify the financing and conditions of sale from the usual sources such as buyer, seller, broker, title or escrow company, etc., he will so state. Pertinent comparable sales data should include identified photographs of all principal above ground improvements or unusual features affecting the value of the comparable sales.

g. All properties appraised and the comparable sales which were relied upon in arriving at the fair market value estimate will be personally inspected in the field by the appraiser and all dates of inspection will be shown in the appraisal report.

h. The effective date to which the valuation applies.

i. A statement of appropriate content and limiting conditions, if any.

j. The certification, signature, and date of signature of the appraiser.

(5) No credit shall be given for site-related improvements.

(C) Deferral of impact fee payments for affordable housing.

(1) Deferrals. Prior to the application for a building permit, builders of affordable housing for very-low-income, low-income, and moderate-income households may request that the payment of impact fees be deferred until the issuance of the certificate of occupancy or one year after the issuance of the building permit, whichever is earlier. This deferral is available only when the affordable housing has been certified by the city development director, as meeting the criteria established by the county for the issuance of a certificate of public facilities

exemption under the article 5, adequate public facilities of the county land development regulations.

(2) Approval of deferrals. Deferrals will be made to applicants who meet the criteria and shall be determined on a case-by-case basis by the city manager.

(3) Loans.

a. Very-low-income and low-income housing. Prior to the application for a building permit, buyers of very-low-income and low-income housing may apply for a loan from the city for 100 percent of the impact fees assessed on very-low-income and low-income housing as that term is defined in the county comprehensive plan. Repayment is due upon sale or transfer of the affected property, or at the end of 15 years.

b. Moderate-income housing. Prior to the application for a building permit, buyers of moderate-income housing may apply for a loan from the city for 50 percent of the impact fees assessed on moderate income housing as that term is defined in the county comprehensive plan. The interest on the loan shall be equivalent to the city's long term borrowing rate at the time of the loan. Repayment of the loan plus interest is due upon sale or transfer of the affected property, or at the end of ten years, whichever occurs first.

(4) Restrictions. No more than 90 impact fee loans shall be granted for any single affordable-housing project.

(5) Sale price. In order to receive a deferral of impact fees the sales prices of the homes cannot exceed 90 percent of median area purchase price as established

by the United States Department of the Treasury in accordance with section 3(b)2 of the United States Housing Act of 1937. In addition, house size is correlated to household size, so that the home to be constructed does not exceed HUD income guidelines.

(6) Reduced city road impact fees for "de minimus" projects within the city's community redevelopment area (CRA). Projects within the city's community redevelopment area (CRA) which are deemed to be "de minimus," that is ten residential units or less, 2,000 square feet of office space or less, or 1,000 square feet of retail space or less, or up to a 20-seat sit-down restaurant, are entitled to a 35 percent reduction in the city's multimodal impact fee.

(D) Transfer of Impact Fee Credits The transfer of impact fee credits shall be permitted on a project-by-project basis subject to the following:

(1) A request to permit the transfer of impact fee credits, if any, shall be submitted simultaneously with the property owner's application for Development Order or Permit in the event of straight zoning applications.

(a) All requests to permit the transfer of impact fees credits shall be approved by the City Commission.

(b) Untimely request shall not be considered and shall be deemed waived.

(2) The City shall establish an account in the name of the owner of the record and credit to the account the amount of impact fee credits due and owing as determined by the City Commission. In the event the owner of record desires to transfer any portion of the impact fee credits to another party, and the City Commission has previously approved the transfer of credits, the owner of record shall submit a notarized affidavit to the City Manager or designee indicating to whom the credits are to be transferred. Upon receipt

of the notarized affidavit and payment of the administrative fee, the impact fee credits shall be transferred to a similar account established for the transferee. The administrative fee shall be two percent (2%) of the value of the impact fee credits at the time of transfer.

(3) The transfer shall become effective upon issuance of a written confirmation or receipt by the City that the credits have been distributed to the transferor.

(4) In no event shall the transferee be entitled to further transfer those same credits to a second transferee.

(5) All other provisions, policies and procedures that are applicable to the payment of impact fees, or to the impact fee credits shall be applicable to the transfer of impact fees.

(E) Credits may be sold, assigned, or conveyed to another person or transferred to another project or development. To transfer credits, the applicant must submit to the City Manager or designee a letter signed and notarized by the owner of the credits that specifies the name of the person receiving the transfer of the credits and the amount of the credit being transferred. Regardless of the date of transfer, the transfer of the credit shall not be effective until the transfer letter is received and accepted and approved by the City Manager or designee.

(F) Procedure for Transfer: No impact fee credits shall be transferable until such time as the City Commission has passed a Resolution approving the transferability of the excess credits.

(1) The Resolution shall identify the original source of the impact fee credits.

(2) The Resolution shall determine the number of excess credits and provide a basis for this determination.

(a) It is the intention of this section that the resolution provide detailed information pertaining to the calculation of the impact fee credits.

(3) At no time shall the number of credits ever exceed the original amount of excess impact fees.

(4) Unused credits shall not be refunded. If Impact Fees are assigned or transferred to a new parcel, there shall be no claim for refund of any excess impact fee credits or fees or for any credits that are not utilized

(F) Expiration of Impact Fee Credits. Unless a longer time period is specifically authorized by the City Commission in a development approval, credit accounts for all impact fee credits shall expire twenty (20) years after the date that the credit account was last utilized, which shall be the date that the City last approved a written assignment of credits from the credit account. If the credit account has never been utilized, the credit account shall expire twenty (20) years after the date that the credit account was established, unless a longer time period is specifically authorized by the Commission in a development approval.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: This ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption.

Passed on first reading the 13th day of January, 2020

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being

put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
MICHAEL J. MEIER, MAYOR				
EULA R. CLARKE, VICE MAYOR				
KELLI GLASS LEIGHTON, COMMISSIONER				
MERRITT MATHESON, COMMISSIONER				
REBECCA S. BRUNER, COMMISSIONER				

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
CITY ATTORNEY