

CITY of ALBUQUERQUE

SIXTEENTH COUNCIL

COUNCIL BILL NO. F/S O-05-119 ENACTMENT NO. _____

SPONSORED BY: CADIGAN

1 ORDINANCE

2 AMENDING SECTIONS 3, 8, 12, 13 AND 20 OF CHAPTER 14, ARTICLE 19,
3 PART 1, THE PUBLIC SAFETY FACILITIES IMPACT FEES ORDINANCE, TO
4 REVISE THE DEFINITIONS OF EFFECTIVE DATE AND GROSS FLOOR AREA,
5 TO INTEGRATE THE COMPONENT CAPITAL IMPROVEMENTS PLAN INTO THE
6 CIP PROCESS, TO CLARIFY THE EXERCISE OF VESTED RIGHTS, TO
7 CLARIFY THE ASSESSMENT PROCESS, AND TO CLARIFY THE CREDIT
8 APPLICATION PROCESS FOR SYSTEM IMPROVEMENTS.

9 Section 1. The definition of "EFFECTIVE DATE" in Section 14-19-1-3 ROA
10 1994 is amended to read as follows:

11 "EFFECTIVE DATE. ~~[- Six months after publication of the adopted ordinance-]~~
12 [+ July 1, 2005 +]."

13 Section 2. The definition of "GROSS FLOOR AREA" in Section 14-19-1-3
14 ROA 1994 is amended to read as follows:

15 "GROSS FLOOR AREA.
16 ~~[- The sum of all the floor areas of a building, measured from the exterior of~~
17 ~~outer supporting walls, including all accessory buildings on the same lot -]~~

18 [+ For a non-residential building, the total floor area, including basements,
19 mezzanines, and upper floors, if any, expressed in square feet measured from
20 the outside surface of outside walls .

21 For a residential building, the heated floor space of the building.+]"

22 Section 3. Section 14-19-1-8(C) shall be amended to read as follows:

23 "(C) The CCIP shall be updated every two years ~~[- from the effective date~~
24 ~~of §§ 14-19-1-1 et seq. -]~~ in conjunction with the CIP ~~[- ordinance -]~~
25 [+process+]. Updates of the land use assumptions shall occur at least every
26 five years from the effective date of §§ 14-19-1-1 et seq. Appropriate revisions

1 and amendments to the impact fees schedules and §§ 14-19-1-1 et seq. shall
2 be made following either form of update, if necessary.”

3 “(C) The CCIP shall be updated every two years [~~from the effective date~~
4 ~~of §§ 14-19-1-1 et seq.~~] in conjunction with the CIP [~~ordinance~~ -]
5 [+process+]. Updates of the land use assumptions shall occur at least every
6 five years from the effective date of §§ 14-19-1-1 et seq. Appropriate revisions
7 and amendments to the impact fees schedules and §§ 14-19-1-1 et seq. shall
8 be made following either form of update, if necessary.”

9 Section 4. Section 14-19-1-12(D) ROA 1994 is amended to read as
10 follows:

11 “(D) Notwithstanding any other provision of §§ 14-19-1-1 et seq.,
12 development approvals resulting in vested rights acquired prior to the
13 enactment date of §§ 14-19-1-1 et seq. are deemed to have satisfied the
14 requirements of §§ 14-19-1-1 et seq. and no additional impact fees shall be
15 assessed or collected against such properties under §§ 14-19-1-1 et seq.
16 Vested rights arising from approvals shall expire if a building permit has not
17 been issued within two years from the [+effective +] date [~~of the approval~~ -]
18 and impact fees may be assessed and collected thereafter.”

19 Section 5. Section 14-19-1-13 ROA 1994 is amended to read as follows:

20 “§ 14-19-1-13 ASSESSMENT AND COLLECTION.

21 (A) The impact fees administrator or his/her designee shall calculate and
22 assess the impact fees at the earliest possible time.

23 (1) For land that is platted or replatted on or after the effective
24 date, the impact fees shall be [+preliminarily+] assessed for development no
25 later than at the time that the subdivision plat is recorded.

26 (2) For land that was platted or replatted prior to the effective date
27 or for development that occurs on existing lots of record, the impact fees shall
28 be assessed at the time of development approval, plan check or issuance of a
29 building permit.

30 (3) For land that was platted or replatted prior to the effective
31 date, or for development that occurs on existing lots of record wherein the
32 owner has already paid or constructed the required off-site improvements
33 within the prior 36 months, such payment or construction shall be credited

1 against the impact fees to be assessed [~~as long as~~] [provided] the
2 improvement paid for or constructed is on the CCIP.

3 (B) The assessment of impact fees shall be in writing and shall be valid
4 for a period of at least four years.

5 (C) Notwithstanding the provisions of this section, the assessment of
6 impact fees may be revised [based on information provided at the time of
7 issuance of building permit, or] if the number of service units in the specific
8 development increases, provided that such revision shall be limited to the
9 impact fees for the additional service units.

10 (D) The impact fees administrator, or his/her designee, shall calculate
11 and assess all other impact fees as follows:

12 (1) Determine the applicable service area;

13 (2) Determine the applicable land use category;

14 (3) Verify the number of dwelling units or the amount of gross
15 floor area (whichever is applicable) in the development; and

16 (4) Multiply the number of dwelling units or the amount of gross
17 floor area, whichever is applicable, by the applicable impact fees from the
18 table in § 14-19-1-14 (Appendix 1B).

19 (E) If the assessment occurs at the time of subdivision plat or site plan
20 approval, the assessment may be based on the applicable fee schedule.

21 (F) If an application proposes a use that does not directly match an
22 existing land use category upon which fees are based, the impact fees
23 administrator shall assign the proposed use to the existing land use category
24 that most closely resembles the proposed use.

25 (G) When new development for which an application for a building
26 permit has been made includes two or more buildings, structures or other land
27 uses in any combination, including two or more uses within a building or
28 structure, the total impact fee assessment shall be the sum of the fees for
29 each and every building, structure, or use, including each and every use
30 within a building or structure or, an independent fee determination may be
31 conducted.

32 (H) When a change of use, plat or replat, redevelopment or modification
33 of an existing use or building requires the issuance of a building permit, the

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1 impact fee shall be based on the difference between the impact fee calculated
2 for the previous use and the impact fee calculated for the proposed use.
3 Should a redevelopment or modification of an existing use or building that
4 requires the issuance of a building permit but does not involve a change in
5 use result in a net increase in gross floor area, the impact fee shall be based
6 on the net increase, if the service units are calculated on gross floor area.
7 Should a change of use, redevelopment or modification of an existing use or
8 building result in a net decrease in gross floor area or calculated impact fee,
9 no refund or credit for past impact fees paid shall be made or created.

10 (I) In addition to the cost of new or expanded system improvements
11 needed to serve new development, the impact fee shall also include the
12 proportionate cost of existing system improvements but only to the extent that
13 such public safety facilities have excess capacity and new development as
14 well as existing development will be served by such facilities.

15 (J) The impact fees administrator shall retain a record of the impact fees
16 assessment. A copy shall be provided to the applicant on the forms
17 prescribed by the city. A notice of impact fees assessment for the site shall
18 be recorded in the appropriate real property title records of the County Clerk
19 [+ ; for subdivisions, this notice shall be included on the final plat +].

20 (K) The impact fees shall be due and payable at the time of issuance of a
21 building permit. Impact fees for mobile homes shall be collected at the time of
22 issuance of a building permit or issuance of a certificate of occupancy.”

23 Section 6. Section 14-19-1-20 ROA 1994, is amended to read as follows:
24 “§ 14-19-1-20 CREDITS.

25 The city shall grant credit against impact fees imposed pursuant to §§ 14-
26 19-1-1 et seq. under the following circumstances:

27 (A) Credits shall be granted only for the value of any construction of
28 improvements or contribution or dedication of land, easements or money for
29 system improvements or system studies listed on the CCIP, made by a
30 developer or his predecessor in title or interest as a condition of development
31 approval or pursuant to a development agreement with the city, or for
32 payments made or to be made pursuant to the terms of any special
33 assessment district (SAD), Public Improvement District (PID), Subdivision

1 Improvement Agreement (SIA), Business Improvement District (BID),
2 Metropolitan Redevelopment District (MRD) or other program by which off-site
3 system improvements are paid or constructed, ~~[- as long as -]~~**[+ provided +]**
4 the projects are listed on the CCIP.

5 (B) Credits shall only be granted for system improvements listed on the
6 CCIP or system studies listed on the CCIP ~~[- or -]~~ for the same category of
7 system improvements and within the same service areas for which impact
8 fees are imposed pursuant to §§ 14-19-1-1 et seq.

9 (C) Credits shall only be granted for contributions, dedications or
10 improvements accepted by the city. Cash contributions shall be deemed
11 accepted when payment is received and accepted by the city. Land or
12 easements shall be deemed accepted when conveyed or dedicated to and
13 accepted by the city. All conveyances and dedications of land or easements
14 shall be conveyed to the city free and clear of all liens, claims and
15 encumbrances. Improvements shall be deemed accepted when:

16 (1) The construction of the creditable improvement is complete
17 and accepted by the city;

18 (2) A suitable maintenance and warranty bond or letter of credit is
19 received and approved by the city; and

20 (3) All design, construction, testing, bonding and acceptance
21 procedures are verified by the city to be in strict compliance with the current
22 city standards as shown by a certificate of completion and acceptance issued
23 by the City Engineer.

24 (D) Notwithstanding division (C) of this section, the city may, by
25 agreement, grant credits for system improvements which have not been
26 completed if the applicant for such credits provides the city with acceptable
27 security to ensure completion of the system improvements in the form of ~~[-a~~
28 ~~performance bond, -]~~**[+an+]** irrevocable letter of credit~~[- , or escrow agreement~~
29 ~~or other form of security payable to or -]~~ for the benefit of the city in an
30 amount determined by the impact fees administrator to be equal to ~~[- 120 -]~~
31 **[+125+]**% of the estimated completion cost of the system improvements,
32 including land acquisition costs and planning and design costs. The value of

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1 such system improvements for computing credits shall be their estimated
2 completion cost, based on documentation acceptable to the city.

3 (E) No credits shall be granted for:

4 (1) System improvements that fail to meet applicable city
5 standards;

6 (2) Project improvements;

7 (3) The construction of local on-site facilities required by zoning,
8 subdivision, or other city regulation intended to serve only a particular
9 development;

10 (4) System improvements made in excess of the level of service
11 established in §§ 14-19-1-1 et seq. unless such system improvements are
12 listed on the CCIP and are required as a condition of development approval; or

13 (5) Any study, analysis or report, or portion thereof, required by
14 the city to determine the project improvements for a development project.

15 (F) Development agreements for system improvements may be
16 negotiated and entered into between the city and a developer, subject to the
17 following requirements:

18 (1) A developer may offer to construct, contribute, dedicate or pay
19 the cost of a capital improvement included as a project in the CCIP;

20 (2) The city may accept such offer on terms satisfactory to the
21 city;

22 (3) The terms of the agreement shall be memorialized in a written
23 agreement between the city and the developer prior to the issuance of a
24 building permit;

25 (4) The agreement shall establish the estimated value of the
26 system improvements, the schedule for initiation and completion of the
27 system improvements, a requirement that the system improvements be
28 completed to accepted city standards, and such other terms and conditions as
29 deemed necessary by the city; and

30 (5) The city must review the system improvements plan, verify
31 costs and time schedules, determine if the system improvements are eligible
32 system improvements, determine if the completed improvement meets
33 applicable city standards, calculate the applicable impact fees otherwise due,

1 determine the amount of the credits for such system improvements to be
2 applied to the otherwise applicable impact fees, and determine if excess
3 credits are created.

4 (G) Credits for system improvements shall be applied for as follows:

5 (1) Credits shall be applied for no later than the time of
6 application for a building permit on forms provided by the city. Credits not
7 applied for within such time period shall be deemed waived.

8 (2) Credits created pursuant to a development agreement with the
9 city entered into between the city and a developer from and after the effective
10 date shall be applied for no later than the time the development agreement is
11 approved by the city.

12 (H) The value of credits and the calculation of excess credits shall be
13 determined by the impact fees administrator, in writing, subject to appeal
14 pursuant to § 14-19-1-21.

15 (I) The value of credits for system improvements shall be computed as
16 follows:

17 (1) The value of cash contributions shall be based on the face
18 value of the cash payment at the time of payment to the city;

19 (2) The value of unimproved land or easements shall ~~[- , at the~~
20 ~~option of the applicant, -]~~ be:

21 (a) The fair market value of the land or easement prior to
22 any increase in value resulting from development approval demonstrated by
23 an appraisal prepared by an appraiser acceptable to the city ~~[- , -]~~ [+ ; or +]

24 (b) The acquisition cost of the land or easement to the
25 developer or his/her predecessor in title or interest demonstrated by
26 documentation acceptable to the city ~~[- , -]~~ [+ , +]

27 (3) The value of system improvements shall ~~[- , at the option of~~
28 ~~the applicant, -]~~ be:

29 (a) The fair market value of the completed system
30 improvement at the time of acceptance by the city demonstrated by an
31 appraisal prepared by an appraiser acceptable to the city; [+ or +]

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1 (b) The actual construction cost of the completed system
2 improvement, including planning and design costs, demonstrated by
3 documentation acceptable to the city;

4 (4) The value of system studies shall be the cost of the study
5 demonstrated by documentation acceptable to the city.

6 (5) An applicant for credits shall be responsible for providing at
7 his/her own expense the appraisals, construction and acquisition cost
8 documentation and other documentation necessary for the valuation of credits
9 by the impact fees administrator. The city shall not be obligated to grant
10 credits to any applicant who cannot provide such documentation in such form
11 as the impact fees administrator may require.

12 (6) In lieu of the appraisals referred to in divisions (l)(2)(a) and
13 (l)(3)(a) of this section, the impact fees administrator may accept an appraisal
14 prepared by an appraiser acceptable to the city that demonstrates the
15 combined fair market value of land, easements or completed improvements at
16 the time of acceptance by the city, less the increase in land value resulting
17 from development approval.

18 (7) The impact fees administrator may accept an appraisal that
19 was prepared contemporaneously with the original contribution, dedication or
20 construction of a system improvement if he/she determines that such
21 appraisal is reasonably applicable to the computation of the credit due.

22 (8) The impact fees administrator retains the right to obtain, at the
23 city's expense, additional engineering and construction cost estimates and/or
24 property appraisals that may, at the impact fees administrator's option, be
25 used to determine the value of credits.

26 (J) Credits granted for system improvements and system studies shall
27 be applied as follows:

28 (1) Credits shall be given in the year the project appears in the
29 CCIP.

30 (2) Credits shall be applied first to offset the impact fees
31 otherwise due for the development project for which the credit was granted. If
32 the value of the credit exceeds the impact fees otherwise due, the excess

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1 credits shall become the property of the applicant, subject to the requirements
2 of §§ 14-19-1-1 et seq.

3 (3) Credits shall only be applied to offset impact fees for projects,
4 within the same service area for which the credit was granted. Credits shall
5 not be used to offset impact fees for other categories of system improvements
6 or for other service areas.

7 (4) If an applicant is entitled to excess credits, the impact fees
8 administrator shall issue a certificate of excess credit to the applicant which
9 denotes the dollar amount of the excess credit, the category of system
10 improvement and service area to which the excess credit may be applied, the
11 name of the applicant as the original credit-holder, a description of the
12 development project for which the credit was granted, and the year in which
13 the credit will become available. The certificate of excess credit shall be
14 signed by both the impact fees administrator and the credit-holder. The
15 impact fees administrator shall retain a copy of the certificate of excess credit
16 and the credit-holder shall be given the original certificate.

17 (5) Excess credits shall be freely transferable in accordance with
18 the provisions of §§ 14-19-1-1 et seq.

19 (6) The credit-holder of excess credits may do any of the
20 following:

21 (a) Apply all or part of the excess credits to offset impact
22 fees due for new development for the same category of system improvements
23 within the same service area for which the credit was granted;

24 (b) Transfer all or part of the certificate of excess credits to
25 another person who shall become the credit-holder upon written notice to the
26 impact fees administrator, subject to the same rights and restrictions as the
27 original credit-holder, in addition to additional restrictions that apply to
28 transferred excess credits; and/or

29 (c) Request reimbursement from the city for all or part of
30 the amount of the excess credits from revenue generated by impact fees paid
31 by new development for system improvements within the same service
32 category and service area for which the credit was granted.

33 (7) Excess credits shall be subject to the following restrictions:

1 (a) Excess credits shall not accrue interest and shall not be
2 considered public money, public funds or public credit within the meaning of
3 any law or ordinance relating to public money, public funds or public credit.

4 (b) Excess credits shall not be reimbursed from the city's
5 general fund or from any other city funding source other than impact fees paid
6 by new development for system improvements within the same service
7 category and service area for which the credit was granted.

8 (c) The city shall, upon request from the credit-holder of
9 excess credits, after acceptance by the city of the project creating credits,
10 provide reimbursements for excess credits on a first in, first out basis and
11 shall not be obligated to provide reimbursements in the event there is no
12 unencumbered account balance in the city's impact fee account for the
13 appropriate service category and service area.

14 (d) Except as otherwise provided in §§ 14-19-1-1 et seq.,
15 excess credits shall not constitute a liability of the city, and the city shall not
16 be obligated to reimburse excess credits.

17 (e) Excess credits transferred from the original credit-
18 holder may be applied to offset up to 100% of the impact fees otherwise due
19 from new development for system improvements within the same service
20 category and service area for which the credit was granted.

21 (f) Excess credits must be applied for, used, sold, or
22 redeemed, if at all, within seven years after their issuance."

23 Section 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
24 clause, word or phrase of this ordinance is for any reason held to be invalid or
25 unenforceable by any court of competent jurisdiction, such decision shall not
26 affect the validity of the remaining provisions of this ordinance. The Council
27 hereby declares that it would have passed this ordinance and each section,
28 paragraph, sentence, clause, word or phrase thereof irrespective of any
29 provision being declared unconstitutional or otherwise invalid.

30 Section 8. COMPILATION. This ordinance shall be incorporated in and
31 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

32 Section 9. EFFECTIVE DATE. This ordinance shall take effect five days
33 after publication by title and general summary.

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