

CITY of ALBUQUERQUE
SIXTEENTH COUNCIL

COUNCIL BILL NO. F/S O-05-121 ENACTMENT NO. _____

SPONSORED BY: CADIGAN

1 **ORDINANCE**
2 **AMENDING SECTIONS 3, 8, 12, 13 AND 20 OF CHAPTER 14, ARTICLE 19,**
3 **PART 3, THE DRAINAGE FACILITIES IMPACT FEES ORDINANCE, TO REVISE**
4 **THE DEFINITIONS OF EFFECTIVE DATE AND GROSS FLOOR AREA, TO**
5 **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 14-19-3-3 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 14-19-3-3
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 14-19-3-8(C) shall be amended to read as follows:

23 "(C) The CCIP shall be updated at least every two years [~~from the~~
24 ~~effective date of §§ 14-19-3-1 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 §§ 14-19-3-1 et seq. Appropriate revisions

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1 and amendments to the impact fees schedules and §§ 14-19-3-1 et seq. shall
2 be made following either form of update, if necessary.”

3 Section 4. Section 14-19-3-12(D) ROA 1994 is amended to read as
4 follows:

5 “(D) Notwithstanding any other provision of §§ 14-19-3-1 et seq.,
6 development approvals resulting in vested rights acquired prior to the
7 enactment date of §§ 14-19-3-1 et seq. are deemed to have satisfied the
8 requirements of §§ 14-19-3-1 et seq. and no additional impact fees shall be
9 assessed or collected against such properties under §§ 14-19-3-1 et seq.
10 Vested rights arising from approvals shall expire if a building permit has not
11 been issued within two years from the [+effective +] date ~~[- of the approval -]~~
12 and impact fees may be assessed and collected thereafter.”

13 Section 5. Section 14-19-3-13 ROA 1994 is amended to read as follows:
14 “§ 14-19-3-13 ASSESSMENT AND COLLECTION.

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

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

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

24 (3) For land that was platted or replatted prior to the effective
25 date, or for development that occurs on existing lots of record wherein the
26 owner has already paid or constructed the required off-site improvements
27 within the prior 36 months, such payment or construction shall be credited
28 against the impact fees to be assessed ~~[-as long as-]~~ [+provided+] the
29 improvement paid for or constructed is on the CCIP.

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

32 (C) Notwithstanding the provisions of this section, the assessment of
33 impact fees may be revised [+based on information provided at the time of

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1 issuance of building permit, or+] if the number of service units in the specific
2 development increases, provided that such revision shall be limited to the
3 impact fees for the additional service units.

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

6 (1) Determine the applicable service area;

7 (2) Determine the applicable land use category;

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

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

14 (G) When new development for which an application for a building
15 permit has been made includes two or more buildings, structures or other land
16 uses in any combination, including two or more uses within a building or
17 structure, the total impact fee assessment shall be the sum of the fees for
18 each and every building, structure, or use, including each and every use
19 within a building or structure or, an independent fee determination may be
20 conducted.

21 (H) When a change of use, plat or replat, redevelopment or modification
22 of an existing use or building requires the issuance of a building permit, the
23 impact fee shall be based on the difference between the impact fee calculated
24 for the previous use and the impact fee calculated for the proposed use.
25 Should a redevelopment or modification of an existing use or building that
26 requires the issuance of a building permit but does not involve a change in
27 use result in a net increase in gross floor area, the impact fee shall be based
28 on the net increase, if the service units are calculated on gross floor area.
29 Should a change of use, redevelopment or modification of an existing use or
30 building result in a net decrease in gross floor area or calculated impact fee,
31 no refund or credit for past impact fees paid shall be made or created.

32 (I) In addition to the cost of new or expanded system improvements
33 needed to serve new development, the impact fee shall also include the

1 proportionate cost of existing system improvements, but only to the extent
2 that such drainage facilities have excess capacity and new development as
3 well as existing development will be served by such facilities.

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

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

12 Section 6. Section 14-19-3-20 ROA 1994, is amended to read as follows:

13 “§ 14-19-3-20 CREDITS.

14 The city shall grant credit against impact fees imposed pursuant to §§ 14-
15 19-3-1 et seq. under the following circumstances:

16 (A) Credits shall be granted against drainage facilities impact fees
17 imposed pursuant to §§ 14-19-3-1 et seq. for the value of any construction of
18 improvements or contribution or dedication of land, easements or money for
19 system improvements or system studies made by a developer or his/her
20 predecessor in title or interest as a condition of development approval or
21 pursuant to a development agreement with the city for drainage improvements
22 which are, or upon completion will be, owned and operated by AMAFCA.

23 (B) Credits shall be granted only for the value of any construction of
24 improvements or contribution or dedication of land, easements or money for
25 system improvements or system studies listed on the CCIP made by a
26 developer or his/her predecessor in title or interest as a condition of
27 development approval or pursuant to a development agreement with the city,
28 or for payments made or to be made pursuant to the terms of any special
29 assessment district (SAD), Public Improvement District (PID), Subdivision
30 Improvement Agreement (SIA), Business Improvement District (BID),
31 Metropolitan Redevelopment District (MRD) or other program by which off-site
32 system improvements are paid or constructed, [-as long as -] [+ provided +]
33 the projects are listed on the CCIP.

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1 (C) Credits shall only be granted for system improvements listed on the
2 CCIP or system studies listed on the CCIP [- or -] for the same category of
3 system improvements and within the same service areas for which impact
4 fees are imposed pursuant to §§ 14-19-3-1 et seq.

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

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

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

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

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

31 (F) No credits shall be granted for:

32 (1) System improvements that fail to meet applicable city
33 standards;

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- 1 (2) Project improvements;
- 2 (3) The construction of local on-site facilities required by zoning,
- 3 subdivision, or other city regulation intended to serve only a particular
- 4 development;
- 5 (4) System improvements made in excess of the level of service
- 6 established in §§ 14-19-3-1 et seq. unless such system improvements are
- 7 listed on the CCIP and are required as a condition of development approval; or
- 8 (5) Any study, analysis or report, or portion thereof, required by
- 9 the city to determine the project improvements for a development project.
- 10 (G) Development agreements for system improvements may be
- 11 negotiated and entered into between the city and a developer, subject to the
- 12 following requirements:
- 13 (1) A developer may offer to construct, contribute, dedicate or pay
- 14 the cost of a capital improvement included as a project in the CCIP;
- 15 (2) The city may accept such offer on terms satisfactory to the
- 16 city;
- 17 (3) The terms of the agreement shall be memorialized in a written
- 18 agreement between the city and the developer prior to the issuance of a
- 19 building permit;
- 20 (4) The agreement shall establish the estimated value of the
- 21 system improvements, the schedule for initiation and completion of the
- 22 system improvements, a requirement that the system improvements be
- 23 completed to accepted city standards, and such other terms and conditions as
- 24 deemed necessary by the city; and
- 25 (5) The city must review the system improvements plan, verify
- 26 costs and time schedules, determine if the system improvements are eligible
- 27 system improvements, determine if the completed improvement meets
- 28 applicable city standards, calculate the applicable impact fees otherwise due,
- 29 determine the amount of the credits for such system improvements to be
- 30 applied to the otherwise applicable impact fees, and determine if excess
- 31 credits are created.
- 32 (H) Credits for system improvements shall be applied for as follows:

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

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

9 (I) The value of credits and the calculation of excess credits shall be
10 determined by the impact fees administrator, in writing, subject to appeal
11 pursuant to § 14-19-3-21.

12 (J) The value of credits for system improvements shall be computed as
13 follows:

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

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

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

21 (b) The acquisition cost of the land or easement to the
22 developer or his/her predecessor in title or interest demonstrated by
23 documentation acceptable to the city.

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

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

29 (b) The actual construction cost of the completed system
30 improvement, including planning and design costs, demonstrated by
31 documentation acceptable to the city.

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

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

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

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

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

21 (K) Credits granted for system improvements and system studies shall
22 be applied as follows:

23 (1) Credits shall be given in the year the project appears in the
24 CCIP.

25 (2) Credits shall be applied first to offset the impact fees
26 otherwise due for the development project for which the credit was granted. If
27 the value of the credit exceeds the impact fees otherwise due, the excess
28 credits shall become the property of the applicant, subject to the requirements
29 of §§ 14-19-3-1 et seq.

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

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

11 (5) Excess credits shall be freely transferable in accordance with
12 the provisions of §§ 14-19-3-1 et seq.

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

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

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

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

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

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

31 (b) Excess credits shall not be reimbursed from the city's
32 general fund or from any other city funding source other than impact fees paid

1 by new development for system improvements within the same service
2 category and service area for which the credit was granted.

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

9 (d) Except as otherwise provided in §§ 14-19-3-1 et seq.,
10 excess credits shall not constitute a liability of the city and the city shall not
11 be obligated to reimburse excess credits.

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

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

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

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

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

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