

# CITY of ALBUQUERQUE

## SIXTEENTH COUNCIL

COUNCIL BILL NO. F/S O-05-122 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: CADIGAN

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

10 Section 1. The definition of “EFFECTIVE DATE” in Section 14-19-4-3 ROA  
11 1994 is amended to read as follows:

12 “EFFECTIVE DATE. [ ~~Six months after publication of the adopted ordinance~~]  
13 [+ July 1, 2005 +].”

14 Section 2. The definition of “GROSS FLOOR AREA” in Section 14-19-4-3  
15 ROA 1994 is amended to read as follows:

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

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

22 [For a residential building, the heated floor space of the building.+]”

23 Section 3. Section 14-19-4-8(C) shall be amended to read as follows:

24 “(C) The CCIP shall be updated every two years [ ~~from the effective date  
25 of §§ 14-19-4-1 et seq. - ]~~ in conjunction with the CIP [ ~~ordinance - ]~~  
26 [+process+]. Updates of the land use assumptions shall occur at least every

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1 five years from the effective date of §§ 14-19-4-1 et seq. Appropriate revisions  
2 and amendments to the impact fees schedules and §§ 14-19-4-1 et seq. shall  
3 be made following either form of update, if necessary.”

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

6 “(D) Notwithstanding any other provision of §§ 14-19-4-1 et seq.,  
7 development approvals resulting in vested rights acquired prior to the  
8 enactment date of §§ 14-19-4-1 et seq. are deemed to have satisfied the  
9 requirements of §§ 14-19-4-1 et seq. and no additional impact fees shall be  
10 assessed or collected against such properties under §§ 14-19-4-1 et seq.  
11 Vested rights arising from approvals shall expire if a building permit has not  
12 been issued within two years from the [effective +] date [- of the approval -]  
13 and impact fees may be assessed and collected thereafter.”

14 Section 5. Section 14-19-4-13 ROA 1994 is amended to read as follows:

15 “§ 14-19-4-13 ASSESSMENT AND COLLECTION.

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

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

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

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

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

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

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

- 8 (1) Determine the applicable service area;
- 9 (2) Determine the applicable land use category;
- 10 (3) Verify the number of dwelling units or the amount of gross  
11 floor area (whichever is applicable) in the development; and
- 12 (4) Multiply the number of dwelling units or the amount of gross  
13 floor area, whichever is applicable, by the applicable impact fees from the  
14 table in § 14-19-4-14 (Appendix 4B).

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

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

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

28 (H) When a change of use, plat or replat, redevelopment or modification  
29 of an existing use or building requires the issuance of a building permit, the  
30 impact fee shall be based on the difference between the impact fee calculated  
31 for the previous use and the impact fee calculated for the proposed use.  
32 Should a redevelopment or modification of an existing use or building that  
33 requires the issuance of a building permit but does not involve a change in

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1 use result in a net increase in gross floor area, the impact fee shall be based  
2 on the net increase, if the service units are calculated on gross floor area.  
3 Should a change of use, redevelopment or modification of an existing use or  
4 building result in a net decrease in gross floor area or calculated impact fee,  
5 no refund or credit for past impact fees paid shall be made or created.

6 (I) In addition to the cost of new or expanded system improvements  
7 needed to serve new development, the impact fee shall also include the  
8 proportionate cost of existing system improvements but only to the extent that  
9 such park, recreation, trails and open space facilities have excess capacity  
10 and new development as well as existing development will be served by such  
11 facilities.

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

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

20 Section 6. Section 14-19-4-20 ROA 1994, is amended to read as follows:  
21 “§ 14-19-4-20 CREDITS.

22 The city shall grant credit against impact fees imposed pursuant to §§ 14-  
23 19-4-1 et seq. under the following circumstances:

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

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1 system improvements are paid or constructed, ~~[- as long as -]~~**[+ provided +]**  
2 the projects are listed on the CCIP.

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

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

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

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

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

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

33 (E) No credits shall be granted for:

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

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

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

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 (H) 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 § 14-19-4-21.

12 (I) 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 ~~[- ÷ -]~~ [+ or +]

24 (3) The value of system improvements shall ~~[- , at the option of~~  
25 ~~the 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 (I)(2)(a) and  
8 (I)(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          (J)    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 §§ 14-19-4-1 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, 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  
9 impact fees administrator shall retain a copy of the certificate of excess credit  
10 and the credit-holder shall be given the original certificate.

11 (5) Excess credits shall be freely transferable in accordance with  
12 the provisions of §§ 14-19-4-1 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 §§ 14-19-4-1 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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