

# CITY of ALBUQUERQUE

## TWENTIETH COUNCIL

COUNCIL BILL NO. F/S O-12-38 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Trudy E. Jones and Brad Winter

1 **ORDINANCE**

2 **DELETING THE CURRENT CHAPTER 14, ARTICLE 19 ROA 1994, THE FOUR**  
3 **EXISTING ORDINANCES THAT ADOPTED IMPACT FEES; ADOPTING A NEW**  
4 **CHAPTER 14, ARTICLE 19 ROA 1994 TO BE KNOWN AS THE “IMPACT FEE**  
5 **ORDINANCE.”**

6 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
7 **ALBUQUERQUE.**

8 **SECTION 1. Chapter 14, Article 19 of the Revised Ordinances of**  
9 **Albuquerque 1994, Sections 14-19-1-1 through 14-19-4-99 ROA 1994,**  
10 **concerning impact fees is hereby repealed.**

11 **SECTION 2. A new Chapter 14, Article 19 of the Revised Ordinances of**  
12 **Albuquerque 1994 is hereby adopted to read as follows:**

13 **“§ 14-19-1 SHORT TITLE.**

14 **Sections 14-19-1 through 14-19-99 ROA 1994 shall be known and cited as**  
15 **the “Impact Fee Ordinance.”**

16 **§ 14-19-2 INTENT AND PURPOSES.**

17 **(A) Sections 14-19-1 et seq. are intended to implement and comply with the**  
18 **New Mexico Development Fees Act (§§ 5-8-1 et seq. NMSA 1978) and shall be**  
19 **interpreted to so comply.**

20 **(B) Sections 14-19-1 et seq. are intended to assess and collect impact fees**  
21 **in an amount based upon appropriate service units for capital facilities in**  
22 **order to finance such facilities, the demand for which is generated by new**  
23 **development in the city. The purpose of §§ 14-19-1 et seq. is to ensure the**  
24 **provision of an adequate level of service for capital facilities throughout the**  
25 **city so that new development may occur in a manner consistent with the city’s**  
26 **Planned Growth Strategy and the Albuquerque/Bernalillo County**

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1 Comprehensive Plan. The City Council intends, by enactment of §§ 14-19-1 et  
2 seq., to require new development to bear an amount not to exceed its  
3 proportionate share of the costs related to the additional capital facilities that  
4 are rationally related to such new development in accordance with applicable  
5 law. Only capital improvement needs that are rationally related to new  
6 development in accordance with applicable law will be paid by impact fees.  
7 Impact fees shall not exceed the cost to pay for a proportionate share of the  
8 cost of system improvements based upon service units needed to serve new  
9 development. Subject to the provisions of §§ 14-19-1 et seq. and the  
10 Development Fees Act (Sections 5-8-1 et seq. NMSA 1978), impact fees shall  
11 be spent on new or enlarged capital facilities and equipment which benefit  
12 those developments which pay the fees.

13 **§ 14-19-3 DEFINITIONS.**

14 For the purpose of §§ 14-19-1 et seq., the following definitions shall apply  
15 unless the context clearly indicates or requires a different meaning.

16 **ADVISORY COMMITTEE.** The standing committee required to be appointed  
17 under the Development Fees Act (Sections 5-8-1 et seq. NMSA 1978).

18 **APPLICANT.** A person, including any governmental entity, seeking  
19 subdivision or development approval, a building permit, a refund, a waiver or a  
20 credit, whichever is applicable.

21 **ASSESSMENT.** The determination of the amount of the impact fee.

22 **BUILDING PERMIT.** The building permit required by the Uniform Building  
23 Code, as adopted by the city.

24 **CAPITAL IMPROVEMENTS.** Any of the following facilities, including  
25 existing facilities, facility expansions or new facilities, that have a life  
26 expectance of ten or more years and are owned and operated by or on behalf  
27 of the city.

28 (1) **ROAD CAPITAL IMPROVEMENTS.** Roads, bridges, bike and  
29 pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any  
30 local components of state and federal highways as specified in Section 5-8-  
31 2D(2) NMSA 1978.

32 (2) **DRAINAGE CAPITAL IMPROVEMENTS.** Storm water, drainage and  
33 flood control facilities.

1           (3) FIRE CAPITAL IMPROVEMENTS. Buildings for fire and rescue and  
2 essential equipment costing \$10,000 or more.

3           (4) POLICE CAPITAL IMPROVEMENTS. Buildings for police and  
4 essential equipment costing \$10,000 or more.

5           (5) PARK CAPITAL IMPROVEMENTS. Parks, recreational areas, and  
6 related areas and facilities.

7           (6) OPEN SPACE CAPITAL IMPROVEMENTS. Open space land and  
8 related facilities.

9           (7) TRAIL CAPITAL IMPROVEMENTS. Trail improvements.

10          CAPITAL IMPROVEMENTS PLAN (CIP). A document that meets the  
11 requirements of Section 5-8-6 of the Development Fees Act (NMSA 1978),  
12 including a description of existing capital facilities for each service area, an  
13 analysis of the capacity and current usage of existing facilities, a description  
14 of capital improvements necessitated by and attributable to growth in the  
15 service area, a demand or equivalency table, projected service units in the  
16 service area based on the land use assumptions, the projected demand for  
17 capital improvements required to serve the new service units, and anticipated  
18 sources of funding independent of impact fees. This document includes an  
19 initial list of capital improvements on which impact fees may be spent, which  
20 is subsequently incorporated into the COMPONENT CAPITAL  
21 IMPROVEMENTS PLAN (CCIP).

22          CITY. The City of Albuquerque.

23          CITY CAPITAL IMPLEMENTATION PROGRAM. The city's capital  
24 improvements program as set out and regulated by §§ 2-12-1 ROA 1994 et seq.  
25 The Capital Implementation Program is funded by General Obligation Bonds  
26 and includes projects that support rehabilitation, deficiency remediation and  
27 growth. The Capital Implementation Program contains, as an additional  
28 component, the list of growth-supporting projects that are funded by impact  
29 fees.

30          CITY COUNCIL. The duly constituted governing body of the City of  
31 Albuquerque.

32          COLLECTION. The payment of the applicable impact fees. (See also  
33 ASSESSMENT.)

1       **COMMERCIAL.** Establishments engaged in the selling or rental of goods,  
2 services or entertainment to the general public, or providing executive,  
3 management, administrative or professional services. Such uses include, but  
4 are not limited to, shopping centers, discount stores, supermarkets, home  
5 improvement stores, pharmacies, automobile sales and service, banks, movie  
6 theaters, amusement arcades, bowling alleys, barber shops, laundromats,  
7 funeral homes, vocational or technical schools, dance studios, health clubs,  
8 golf courses, real estate, insurance, property management, investment,  
9 employment, travel, advertising, secretarial, data processing, telephone  
10 answering, telephone marketing, music, radio and television recording and  
11 broadcasting studios; professional or consulting services in the fields of law,  
12 architecture, design, engineering, accounting and similar professions; interior  
13 decorating consulting services; medical and dental offices and clinics,  
14 including veterinarian clinics and kennels; and business offices of private  
15 companies, utility companies, trade associations, unions and nonprofit  
16 organizations.

17       **COMPONENT CAPITAL IMPROVEMENTS PLAN (CCIP).** A component of  
18 the city's Capital Implementation Program that identifies the capital  
19 improvements on which impact fees may be spent. This component of the  
20 city's Capital Implementation Program is funded by impact fees and limited to  
21 projects that support growth. The CCIP is adopted and revised at the same  
22 time and via the same process as the Capital Implementation Program of  
23 which it is a part. The CCIP provides the process by which the list of capital  
24 improvements identified in the impact fee Capital Improvements Plan (CIP) is  
25 amended between updates of the CIP.

26       **COUNTY.** The County of Bernalillo.

27       **COMPREHENSIVE PLAN.** The City of Albuquerque/Bernalillo County  
28 Comprehensive Plan.

29       **CREDIT.** Credit for the value of the construction, contribution or dedication  
30 of system improvements or the contribution of money for system  
31 improvements accepted by the city.

32       **CREDIT-HOLDER.** The person entitled to transfer, apply or seek  
33 reimbursement for excess credits.

1       **DEEMED COMPLETE** means that an applicant has been issued a building  
2 permit.

3       **DEVELOPER.** Any person, corporation, organization or other legal entity  
4 constructing or creating new development.

5       **DEVELOPMENT.** The division of land, reconstruction, redevelopment,  
6 conversion, structural alteration, relocation or enlargement of any structure;  
7 or any use, change of use or extension of the use of land, any of which  
8 increases the number of service units.

9       **DEVELOPMENT AGREEMENT.** A written agreement entered into between  
10 the city and a developer whereby the developer agrees to dedicate or  
11 construct capital improvements.

12       **DEVELOPMENT APPROVAL.** Written authorization, such as approval of a  
13 subdivision application or issuance of a building permit, or other forms of  
14 official action required by the city prior to commencement of construction.

15       **DEVELOPMENT SITE.** The property under consideration for development  
16 at the time of application for a building permit.

17       **DWELLING UNIT.** One or more connected rooms and a single kitchen  
18 designed for and occupied by no more than one family for living and sleeping  
19 purposes.

20       **EFFECTIVE DATE.** July 1, 2005.

21       **ENCUMBERED.** Impact fee funds committed for a specified capital  
22 improvement on a specified time schedule which does not exceed seven years  
23 from the date of payment of the impact fees.

24       **EXCESS CREDITS.** That portion of the credit granted for system  
25 improvements which exceeds the value of the impact fees otherwise due from  
26 the development.

27       **FACILITY EXPANSION.** The expansion of the capacity of an existing facility  
28 that serves the same function as an otherwise necessary new capital  
29 improvement, in order that the existing facility may serve new development.  
30 The term does not include the repair, maintenance, modernization or  
31 expansion of an existing facility to improve service to existing development.

32       **FIRST IN, FIRST OUT** means expenditures of impact fee revenues reflecting  
33 the chronological order in which the impact fee revenues were collected.

1       **GROSS FLOOR AREA.** The total floor area, including basements,  
2       mezzanines, and upper floors, if any, expressed in square feet measured from  
3       the outside surface of outside walls, but excluding enclosed vehicle parking  
4       areas.

5       **HOTEL/MOTEL.** An establishment that provides paid lodging in rooms or  
6       suites that do not meet the definition of dwelling units.

7       **IMPACT FEE.** A charge or assessment imposed by the city on new  
8       development in order to generate revenue for funding or recouping the costs  
9       of capital improvements rationally related to new development in accordance  
10      with applicable law. The term includes amortized charges, lump-sum charges,  
11      capital recovery fees, contributions in aid of construction, development fees  
12      and any other fee that functions as described by this definition. The term does  
13      not include hook-up fees, dedication of rights-of-way or easements or  
14      construction or dedication of on-site water distribution, wastewater collection  
15      or drainage facilities, or streets, sidewalks or curbs if the dedication or  
16      construction is required by a previously adopted valid ordinance or regulation  
17      and is rationally related to new development in accordance with applicable  
18      law.

19      **IMPACT FEE STUDY.** The report prepared by Duncan Associates for the  
20      City of Albuquerque titled “Impact Fee Land Use Assumptions and Capital  
21      Improvements Plan, 2012-2022,” in September 2012, as may be amended, that  
22      constitutes the LUA and CIP for the update of the road, park, open space, trail,  
23      fire and police impact fees for the City of Albuquerque.

24      **IMPACT FEES ADMINISTRATOR.** The person designated to administer the  
25      impact fee program established by §§ 14-19-1 et seq.

26      **INDEPENDENT FEE DETERMINATION.** A finding by the impact fees  
27      administrator that an independent fee study does or does not meet the  
28      requirements for such a study as established by this chapter and, if the  
29      requirements are met, the fee calculated by the impact fees administrator  
30      therefrom.

31      **INDEPENDENT FEE STUDY.** The engineering, financial and/or economic  
32      documentation prepared by an applicant in accordance with § 14-19-17 to

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1 allow an individual determination of an impact fee other than by use of the  
2 applicable fee schedule.

3 **INDUSTRIAL/WAREHOUSE.** An establishment primarily engaged in the  
4 fabrication, assembly or processing of goods, or the display, storage and sale  
5 of goods to other firms for resale, as well as activities involving significant  
6 movement and storage of products or equipment. Typical uses include  
7 manufacturing plants, welding shops, wholesale bakeries, dry cleaning plants,  
8 bottling works, wholesale distributors, storage warehouses, moving and  
9 storage firms, trucking and shipping operations and major mail processing  
10 centers.

11 **INSTITUTIONAL.** A governmental, quasi-public or institutional use, or a  
12 non-profit recreational use, not located in a shopping center. Typical uses  
13 include elementary, secondary or higher educational establishments, day care  
14 centers, hospitals, mental institutions, nursing homes, assisted living  
15 facilities, fire stations, city halls, court houses, post offices, jails, libraries,  
16 museums, places of religious worship, military bases, airports, bus stations,  
17 fraternal lodges, parks and playgrounds.

18 **LAND USE.** The primary category of use for any principal or accessory  
19 building, structure or use located on a development site.

20 **LAND USE ASSUMPTIONS (LUA).** A description of the service area and  
21 projections of changes in land uses, densities, intensities and population in  
22 the service area over at least a five-year period.

23 **LEVEL OF SERVICE (LOS).** A standardized measure of the quantity or  
24 quality of service provided by a facility or system of facilities. It is often  
25 expressed as a ratio between capacity and demand, or cost and demand. The  
26 term “existing LOS” refers to the calculation of the measure at the time the  
27 CIP is prepared or updated.

28 **MICRO MULTI-FAMILY.** A MULTI-FAMILY dwelling unit with a GROSS  
29 FLOOR AREA of 600 square feet or less.

30 **MINI-WAREHOUSE.** An enclosed storage facility containing independent,  
31 fully enclosed bays that are leased to persons for storage of their household  
32 goods or personal property.

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1       **MOBILE HOME/RV PARK.** An area developed or intended to be developed  
2 for occupancy by two or more mobile homes or recreational vehicles that are  
3 used for dwelling purposes, and spaces are rented individually to residents.

4       **MULTI-FAMILY.** A dwelling unit that is connected to one or more other  
5 dwelling units.

6       **NEW DEVELOPMENT.** The division of land; reconstruction,  
7 redevelopment, conversion, structural alteration, relocation or enlargement of  
8 any structure; or any use, change of use or extension of the use of land; any  
9 of which increases the number of service units.

10       **OFFSET.** The amount by which an impact fee is reduced to fairly reflect the  
11 credits applied for system improvements.

12       **OWNER OF RECORD.** The persons having legal and equitable title to the  
13 property as recorded in the real property records of the county.

14       **PROJECT IMPROVEMENTS.** Site specific improvements or facilities that  
15 are primarily planned, designed or built to provide service for a specific  
16 development project and that are necessary for the use of the occupants or  
17 users of that project, and that do not provide significant additional capacity for  
18 other developments. The physical location of the improvement or facility, on-  
19 site or off-site, shall not be considered determinative of whether it is a  
20 **PROJECT IMPROVEMENT** or a system improvement. No improvement or  
21 facility specifically identified in the CIP, as may subsequently be amended in  
22 the CCIP, shall be considered a **PROJECT IMPROVEMENT**.

23       **PROPORTIONATE SHARE.** That portion of the cost of system  
24 improvements which is reasonably and fairly related to the service demands  
25 and needs of new development.

26       **QUALIFIED PROFESSIONAL.** A professional engineer, surveyor, financial  
27 analyst or planner providing services within the scope of his or her license,  
28 education or experience.

29       **REFUND.** Reimbursement of impact fees to the owner of record of property  
30 for which impact fees have been paid.

31       **SERVICE AREAS.** Geographically defined areas within the city that have  
32 been designated in the CIP in which development potential may create the  
33 need for capital improvements to be funded by impact fees.



1       **SERVICE UNIT.** A standardized measure of consumption, use, generation  
2 or discharge attributable to an individual unit of development calculated in  
3 accordance with generally accepted engineering or planning standards for a  
4 particular category of capital improvements. The following service units are  
5 used in the impact fee analyses:

6       (1) Roads. Daily vehicle-miles of travel on the City arterial road system  
7 during a typical weekday, as more fully described in the Impact Fee Study.

8       (2) Drainage. Acres of impervious cover.

9       (3) Parks. Equivalent dwelling units, which each represent the average  
10 number of persons residing in a single-family detached dwelling unit, as more  
11 fully described in the Impact Fee Study.

12       (4) Open space. Equivalent dwelling units.

13       (5) Trails. Equivalent dwelling units.

14       (6) Fire. Functional population, which each represent the equivalent of a  
15 person present at the site of a land use for 24 hours during a typical weekday,  
16 as more fully described in the Impact Fee Study.

17       (7) Police. Functional population.

18       **SINGLE-FAMILY DETACHED.** A building arranged or designed to be  
19 occupied by one family, including mobile homes not located in a mobile home  
20 park, the structure having only one dwelling unit and not attached to any other  
21 dwelling unit.

22       **SYSTEM IMPROVEMENTS.** Capital improvements that expand the capacity  
23 of the type of facility to accommodate the impacts of additional development.

24       **SYSTEM STUDIES.** Any study, analysis or report, or portion thereof,  
25 required by the city to determine the system improvements for new  
26 development.

27       **WAIVE.** To relinquish or abandon a claim or right.

28       **§14-19-4 AUTHORITY.**

29       The city is authorized to impose impact fees under the Development Fees  
30 Act (Sections 5-8-1 et seq. NMSA 1978). The provisions of §§ 14-19-1 et seq.  
31 shall not be construed to limit the power of the city to use any other methods  
32 or powers otherwise available for accomplishing the purposes set forth in §§  
33 14-19-1 et seq., either in substitution or in conjunction with §§ 14-19-1 et seq.,

provided that such methods or powers are not inconsistent with or prohibited by §§ 14-19-1 et seq. or the Development Fees Act.

**§ 14-19-5 APPLICABILITY.**

Sections 14-19-1 et seq. shall be applicable to all development that occurs within the corporate jurisdiction of the city, as may be amended in the future, and shall apply uniformly within each service area. Impact fees are not assessed or collected within the Mesa del Sol development.

**§ 14-19-6 FINDINGS AND DECLARATIONS.**

The City Council hereby finds and declares that:

(A) The city is committed to the funding and provision of capital facilities necessary to cure any deficiencies that may exist in already developed areas of the city.

(B) Such facilities shall be provided by the city using existing funding sources allocated for such facilities, other than impact fees, including, but not limited to, the general fund, general obligation bonds, special assessment districts and metropolitan redevelopment districts.

(C) New development causes and imposes increased demands on public facilities.

(D) The City Council appointed an advisory committee, pursuant to Section 5-8-37 NMSA 1978, to review land use assumptions (LUA), the capital improvements plan (CIP) and the component capital improvements plan (CCIP). The advisory committee reviewed the LUA, the CIP and the CCIP.

(E) The land use assumptions, incorporated in §§ 14-19-1 et seq. by reference, indicate that new development will continue and will place increasing demands on the city to provide additional capital improvements.

(F) New development should pay an amount not to exceed its proportionate share of the capital costs related to the additional capital improvements needed to accommodate that new development.

(G) The City Council finds that the impact fees do not exceed the proportionate share of the cost attributable to new development to maintain the existing level of service currently provided to existing development for each type of capital improvement in each service area.

1 (H) The City Council, after careful consideration of the matter, hereby finds  
2 and declares that it is in the best interest of the general welfare of the city and  
3 its residents to impose impact fees upon new development in order to finance  
4 capital improvements in the designated service areas for which demand is  
5 created by the new development.

6 (I) The City Council further finds and declares that impact fees provide a  
7 reasonable method of assessing new development to ensure that such new  
8 development pays a portion of the costs of capital facilities that are rationally  
9 related to the new development in accordance with applicable law.

10 (J) The City Council further finds and declares that such impact fees are  
11 equitable, and impose a fair assessment on new development by requiring  
12 that new development pay a portion of the cost, and deems it advisable to  
13 adopt §§ 14-19-1 et seq. as set forth.

14 (K) The City Council further finds that there exists a rational relationship  
15 between the capital costs of providing capital improvements at the existing  
16 level of service and the impact fees imposed on development under §§ 14-19-1  
17 et seq.

18 (L) The City Council further finds that there exists a rational relationship  
19 between the impact fees to be collected pursuant to §§ 14-19-1 et seq. and the  
20 expenditure of those funds on capital costs related to capital facilities as  
21 limited and restricted by §§ 14-19-1 et seq.

22 (M) The City Council further finds and declares that §§ 14-19-1 et seq. are  
23 consistent with both the procedural and substantive requirements of the New  
24 Mexico Development Fees Act (Sections 5-8-1 et seq. NMSA 1978).

25 (N) The City Council has carefully considered the Report prepared by  
26 Integrated Utilities Group, Inc. for the City of Albuquerque titled "Drainage  
27 Impact Fee Study Final Report" dated September 2004, and as amended  
28 November 2004, and further finds that said Report sets forth reasonable and  
29 equitable methodology and assumptions consistent with the New Mexico  
30 Development Fees Act for the formulation and imposition of a Drainage  
31 Facilities Development Impact Fee Program for the City of Albuquerque.

32 (O) The City Council has carefully considered the land use assumptions  
33 and capital improvements plan report (Impact Fee Study) dated September

1 2012, prepared by Duncan Associates for the City of Albuquerque titled  
2 “Impact Fee Land Use Assumptions and Capital Improvements Plan, 2012-  
3 2022,” and further finds that said Impact Fee Study sets forth reasonable and  
4 equitable methodologies and assumptions consistent with the New Mexico  
5 Development Fees Act for the update of the road, park, open space, trail, fire  
6 and police impact fees for the City of Albuquerque.

7 **§ 14-19-7 LAND USE ASSUMPTIONS.**

8 The land use assumptions provide a projection of changes in land uses,  
9 densities, intensities and population within planning information areas over at  
10 least a five-year period.

11 (A) The City Council hereby incorporates by reference the land use  
12 assumptions set forth in § 14-13-5-2 ROA 1994, as amended. These land use  
13 assumptions adopted in 2009 continue to be the basis for the drainage impact  
14 fees.

15 (B) The land use assumptions for the 2012 update of the road, park, open  
16 space, trail, fire and police impact fees are contained in the Impact Fee Study,  
17 which is hereby adopted and incorporated herein by reference.

18 (C) The land use assumptions shall be reviewed and updated, if necessary,  
19 in conjunction with the update of the CCIP. Updates of the land use  
20 assumptions shall occur at least every five years from the effective date of §§  
21 14-19-1 et seq., unless the City Council makes a determination that an update  
22 is not necessary.

23 **§ 14-19-8 CAPITAL IMPROVEMENTS PLAN.**

24 (A) The Capital Improvements Plan (CIP) is a document that meets the  
25 requirements of Section 5-8-6 of the Development Fees Act (NMSA 1978),  
26 including a description of existing capital facilities for each service area, an  
27 analysis of the capacity and current usage of existing facilities, a description  
28 of capital improvements necessitated by and attributable to growth in the  
29 service area, a demand or equivalency table, projected service units in the  
30 service area based on the land use assumptions, the projected demand for  
31 capital improvements required to serve the new service units, and anticipated  
32 sources of funding independent of impact fees. This document includes an  
33 initial list of capital improvements on which impact fees may be spent, which

1 is subsequently incorporated into the Component Capital Improvements Plan  
2 (CCIP) and amended between updates of the CIP.

3 (B) The City Council hereby adopts by reference the drainage CCIP (the  
4 report prepared by Integrated Utilities Group, Inc. for the City of Albuquerque  
5 titled "Drainage Impact Fee Study Final Report" dated September 2004, and as  
6 amended November 2004), particularly as it relates to the allocation of a fair  
7 share of the costs of new facilities for drainage facilities to be borne by new  
8 users of such facilities and the levels of service to be provided to the citizens  
9 of the city for these facilities. Updates of the drainage CIP shall occur at least  
10 every five years from the effective date of §§ 14-19-1 et seq., unless the City  
11 Council makes a determination that an update is not necessary.

12 (C) The City Council hereby adopts by reference the Impact Fee Study,  
13 which contains the 2012 update of the roads, parks, open space, trails, fire and  
14 police CIPs, particularly as it relates to the allocation of a fair share of the  
15 costs of new facilities to be borne by new users of such facilities and the  
16 levels of service to be provided to the citizens of the city for these facilities.  
17 Updates of the CIPs shall occur at least every five years from the effective date  
18 of §§ 14-19-1 et seq., unless the City Council makes a determination that an  
19 update is not necessary.

20 (D) The updated lists of capital improvements included in the Impact Fee  
21 Study for roads, drainage, parks, open space, trails, fire and police facilities  
22 shall be incorporated into the next update of the CCIP. The CCIP shall be  
23 updated every two years in conjunction with the Capital Implementation  
24 Program process. Since developers may have expectations of receiving credit  
25 for improvements related to projects in the road and drainage portions of the  
26 CCIP, road and drainage capital improvements will be removed from the CCIP  
27 between updates of the respective CIPs only if the project is underway or  
28 completed.

#### 29 § 14-19-9 ADVISORY COMMITTEE.

30 The advisory committee is a standing committee established pursuant to §  
31 14-13-1-4 ROA 1994. The advisory committee shall meet at the direction of the  
32 City Council. The functions of the advisory committee shall include:

33 (A) Advise and assist the city in adopting land use assumptions;

1 (B) Review the land use assumptions, capital improvements plan and CCIP  
2 and file written comments;

3 (C) Monitor and evaluate implementation of the CCIP;

4 (D) File annual written reports with respect to the progress of the CCIP and  
5 report to the city any perceived inequities in implementing the plan or  
6 imposing the impact fees;

7 (E) Advise the city of the need to update or revise the land use  
8 assumptions, capital improvements plan, CCIP and impact fees; and

9 (F) Any other tasks the City Council may direct the advisory committee to  
10 perform.

11 **§ 14-19-10 ESTABLISHMENT OF SERVICE AREAS.**

12 Service areas for the Impact Fees are established as follows (as depicted  
13 on the maps included in the Impact Fee Study and attached hereto).

14 (A) Roads. One road impact fee service area is established, encompassing  
15 all of the land within the City limits, with the exclusion of the area within the  
16 Mesa del Sol development.

17 (B) Drainage. Five drainage impact fee service areas are established, as  
18 depicted on the maps included in the Impact Fee Study and attached hereto.

19 (C) Parks. Four park impact fee service areas are established, as follows:

20 (1) Northeast Service Area. All of the land within the City limits, as may  
21 be amended, located north of Candelaria Road and east of I-25.

22 (2) Southeast Service Area. All of the land within the City limits, as may  
23 be amended, located south of Candelaria Road and east of I-25, with the  
24 exclusion of the area within the Mesa del Sol development.

25 (3) Northwest Service Area. All of the land within the City limits, as may  
26 be amended, located north of I-40 and west of I-25.

27 (4) Southwest Service Area. All of the land within the City limits, as may  
28 be amended, located south of I-40 and west of I-25.

29 (D) Open Space. The open space impact fee service area is the entire area  
30 within the City limits, as may be amended, with the exclusion of the area  
31 within the Mesa del Sol development.

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1 (E) Trails. The trail impact fee service area is the entire area within the City  
2 limits, as may be amended, with the exclusion of the area within the Mesa del  
3 Sol development.

4 (F) Fire. The fire impact fee service area is the entire area within the City  
5 limits, as may be amended, with the exclusion of the area within the Mesa del  
6 Sol development.

7 (G) Police. The police impact fee service area is the entire area within the  
8 City limits, as may be amended, with the exclusion of the area within the Mesa  
9 del Sol development.

10 § 14-19-11 IMPOSITION.

11 (A) Any developer engaging in new development after the effective date of  
12 §§ 14-19-1 et seq. shall pay impact fees in the manner and in the amounts  
13 required in §§ 14-19-1 et seq., unless otherwise specified in this section. No  
14 building permit shall be issued for development within the city unless the  
15 impact fees are assessed and collected pursuant to §§ 14-19-1 et seq.

16 (B) Payment of impact fees specified in this section shall constitute full and  
17 complete payment of the project's proportionate share of system  
18 improvements for which such fee was paid and shall constitute compliance  
19 with the requirements of §§ 14-19-1 et seq.

20 (C) Notwithstanding any other provision of §§ 14-19-1 et seq., applications  
21 for building permits which have been filed and deemed complete by the city  
22 prior to the effective date of this ordinance shall remain subject to the impact  
23 fees in place when the fees were assessed.

24 (D) Nothing in §§ 14-19-1 et seq. shall prevent the City from requiring  
25 developers to construct reasonable site specific improvements or facilities but  
26 only in connection with a development. Required improvements must be  
27 primarily planned, designed or built to provide service for a specific  
28 development project and necessary for the use of the occupants or users of  
29 that project. The City may not require the developer to construct  
30 improvements that provide significant additional capacity for other  
31 developments. The City may require developers to prepare necessary studies,  
32 analyses, or reports required as part of a development approval process.

1 (E) Nothing in §§ 14-19-1 et seq. shall prevent the city from requiring a  
2 developer to construct reasonable system improvements necessitated by and  
3 attributable to the new development as a condition of development approval  
4 or pursuant to a development agreement with the city, provided that services  
5 are not available from existing facilities with actual capacity to serve the new  
6 development. If the system improvement is on the CCIP, the city shall grant  
7 applicable credits to the developer for constructing such system  
8 improvements.

9 (F) Nothing in §§ 14-19-1 et seq. shall abrogate the city's authority to  
10 require the applicant to prepare necessary studies, analyses or reports  
11 required as a part of the development approval process.

12 (G) Nothing in §§ 14-19-1 et seq. shall prevent the city from rejecting an  
13 application for development if it determines that such development is  
14 inconsistent with adopted city plans, regulations or ordinances.

15 § 14-19-12 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 date, the  
19 impact fees shall be preliminarily assessed for development no later than at  
20 the time that the subdivision plat is recorded.

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

25 (B) The assessment of impact fees shall be in writing and shall be valid for  
26 a period of four years.

27 (C) Notwithstanding the provisions of this section, the assessment of  
28 impact fees may be revised based on information provided at the time of  
29 issuance of the building permit, or if the number of service units in the  
30 specific development increases, provided that such revision shall be limited to  
31 the impact fees for the additional service units.

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



- 1 (1) Determine the applicable service area;  
2 (2) Determine the applicable land use category;  
3 (3) Verify the number of dwelling units or the amount of gross floor area  
4 (whichever is applicable) in the development; and  
5 (4) Multiply the number of dwelling units or the amount of gross floor  
6 area, whichever is applicable, by the applicable impact fees from the table in §  
7 14-19-14.

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 existing  
11 land use category upon which fees are based, the impact fees administrator  
12 shall assign the proposed use to the existing land use category that most  
13 closely resembles the proposed use.

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

20 (H) When a change of use, redevelopment or modification of an existing use  
21 or building requires the issuance of a building permit and results in a net  
22 increase in gross floor area the impact fee shall be based on the net increase,  
23 if the service units are calculated on gross floor area for the new category of  
24 land use type. Should a change of use, redevelopment or modification of an  
25 existing use or building result in a net decrease in gross floor area or  
26 calculated impact fee, no refund or credit for past impact fees paid shall be  
27 made or created.

28 (I) The impact fees administrator shall retain a record of the impact fees  
29 assessment. A copy shall be provided to the applicant on the forms  
30 prescribed by the city. A notice of impact fees assessment for the site shall be  
31 recorded in the appropriate real property title records of the County Clerk; for  
32 subdivisions, this notice shall be included on the final plat.

33 § 14-19-13 FEE SCHEDULES.

1 The following impact fees are hereby imposed upon all new development in  
2 the city, excluding in Mesa del Sol, that occurs on or subsequent to the  
3 effective date of this ordinance, unless fees were assessed under the previous  
4 fee schedule within four years prior to the date of the completed building  
5 permit application. Assessment of impact fees prior to building permit shall  
6 be based on 50% of the maximum fees contained in the reports referenced in  
7 §14-19-6 (N) and (O) as shown in the following impact fee schedules.  
8 Assessment and collection at time of building permit shall be based on the  
9 following phase-in schedule: Prior to January 1, 2014, fees shall be assessed  
10 and collected at 20% of the rates shown in the fee schedules;  
11 From January 1, 2014 through December 31, 2014, fees shall be assessed and  
12 collected at 40% of the rates shown in the fee schedules;  
13 From January 1, 2015 through December 31, 2015, fees shall be assessed and  
14 collected at 60% of the rates shown in the fee schedules;  
15 From January 1, 2016 through December 31, 2016, fees shall be assessed and  
16 collected at 80% of the rates shown in the fee schedules;  
17 From January 1, 2017 onward, fees shall be assessed and collected at 100% of  
18 the rates shown in the fee schedules.

19 (A) Road impact fees.

Land Use Type	Unit	Fee/Unit
Single-Family Detached	Dwelling	\$1,399
Multi-Family	Dwelling	\$649
Micro Multi-Family	Dwelling	\$325
Mobile Home/RV Park	Space	\$451
Hotel/Motel	Room	\$928
Commercial	1,000 sq. ft.	\$1,409
Public/Institutional	1,000 sq. ft.	\$885
Industrial/Warehouse	1,000 sq. ft.	\$588
Mini-Warehouse	1,000 sq. ft.	\$228

20 (B) Drainage impact fees.

Service Area	Fee per Impervious Acre
Central City	\$0

<b>Far Northeast</b>	<b>\$5,104</b>
<b>Tijeras</b>	<b>\$5,104</b>
<b>Southwest Mesa</b>	<b>\$5,104</b>
<b>Northwest Mesa</b>	<b>\$5,104</b>

**1 (C) Fire impact fees.**

<b>Land Use Type</b>	<b>Unit</b>	<b>Fee/Unit</b>
<b>Single-Family Detached</b>	<b>Dwelling</b>	<b>\$133</b>
<b>Multi-Family</b>	<b>Dwelling</b>	<b>\$73</b>
<b>Micro Multi-Family</b>	<b>Dwelling</b>	<b>\$37</b>
<b>Mobile Home/RV Park</b>	<b>Space</b>	<b>\$115</b>
<b>Hotel/Motel</b>	<b>Room</b>	<b>\$81</b>
<b>Commercial</b>	<b>1,000 sq. ft.</b>	<b>\$122</b>
<b>Public/Institutional</b>	<b>1,000 sq. ft.</b>	<b>\$76</b>
<b>Industrial/Warehouse</b>	<b>1,000 sq. ft.</b>	<b>\$19</b>
<b>Mini-Warehouse</b>	<b>1,000 sq. ft.</b>	<b>\$10</b>

**2 (D) Police impact fees.**

<b>Land Use Type</b>	<b>Unit</b>	<b>Fee/Unit</b>
<b>Single-Family Detached</b>	<b>Dwelling</b>	<b>\$58</b>
<b>Multi-Family</b>	<b>Dwelling</b>	<b>\$32</b>
<b>Micro Multi-Family</b>	<b>Dwelling</b>	<b>\$16</b>
<b>Mobile Home/RV Park</b>	<b>Space</b>	<b>\$50</b>
<b>Hotel/Motel</b>	<b>Room</b>	<b>\$35</b>
<b>Commercial</b>	<b>1,000 sq. ft.</b>	<b>\$53</b>
<b>Public/Institutional</b>	<b>1,000 sq. ft.</b>	<b>\$33</b>
<b>Industrial/Warehouse</b>	<b>1,000 sq. ft.</b>	<b>\$8</b>
<b>Mini-Warehouse</b>	<b>1,000 sq. ft.</b>	<b>\$5</b>

**3 (E) Park impact fees.**

<b>Housing Type</b>	<b>Unit</b>	<b>Fee/Unit</b>
<b>Single-Family Detached</b>	<b>Dwelling</b>	<b>\$902</b>
<b>Multi-Family</b>	<b>Dwelling</b>	<b>\$487</b>
<b>Micro Multi-Family</b>	<b>Dwelling</b>	<b>\$244</b>
<b>Mobile Home/RV Park</b>	<b>Space</b>	<b>\$776</b>

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1 (F) Open space impact fees.

Housing Type	Unit	Fee/Unit
Single-Family Detached	Dwelling	\$449
Multi-Family	Dwelling	\$242
Micro Multi-Family	Dwelling	\$121
Mobile Home/RV Park	Space	\$386

2 (G) Trail impact fees.

Housing Type	Unit	Fee/Unit
Single-Family Detached	Dwelling	\$49
Multi-Family	Dwelling	\$27
Micro Multi-Family	Dwelling	\$14
Mobile Home/RV Park	Space	\$42

3 § 14-19-14 USE OF FEES COLLECTED.

4 (A) The funds collected pursuant to §§ 14-19-1 et seq. shall be used solely  
5 for the purpose of planning, design, land acquisition, construction, expansion  
6 and development of system improvements for the service area from which the  
7 impact fees were collected.

8 (1) Eligible costs include, but are not limited to, the costs of system  
9 capacity and/or system impact studies, planning, design and construction,  
10 land acquisition, land improvement, design and engineering related thereto,  
11 including the cost of constructing or reconstructing system improvements  
12 including, but not limited to, the construction contract price, surveying and  
13 engineering fees, and related land acquisition costs.

14 (2) Impact fees shall not be used for routine and periodic maintenance  
15 expenditures, personnel training and other operating costs.

16 (3) Road impact fees collected on or after the effective date of this  
17 ordinance shall not be expended for right-of-way acquisition or collector road  
18 improvements. The costs of these components have not been included in the  
19 updated road impact fees, and credit will no longer be provided to developers  
20 who make right-of-way dedications or improve collector roads.

21 (4) Trail impact fees collected on or after the effective date of this  
22 ordinance shall not be expended for right-of-way acquisition. The cost of  
23 right-of-way has not been included in the updated trail impact fees, and credit

1 will no longer be provided to developers who make right-of-way dedications  
2 for trails.

3 (B) Notwithstanding the above, impact fees may also be spent on:

4 (1) Fees paid to independent qualified professionals who are not  
5 employees of the city for preparing and updating the land use assumptions,  
6 impact fee capital improvements plan and impact fee study;

7 (2) Costs and fees charged by qualified professionals who are not  
8 employees of the city for services directly related to the construction of capital  
9 improvements; and

10 (3) Administrative costs associated with §§ 14-19-1 et seq. for city  
11 employees who are qualified professionals. Such administrative costs shall  
12 not exceed 3% of the total impact fees collected, as provided by Section 5-8-4  
13 NMSA 1978. The city shall be entitled to expend up to 3% of the impact fees  
14 collected annually to offset the permissible administrative costs associated  
15 with the collection and use of such funds.

16 (C) The city may issue bonds, revenue certificates and other obligations of  
17 indebtedness in such manner and subject to such limitations as may be  
18 provided by law in furtherance of the provision of capital improvement  
19 projects. Funds pledged toward retirement of bonds, revenue certificates or  
20 other obligations of indebtedness for such projects may include impact fees  
21 and other city revenues as may be allocated by the City Council. The impact  
22 fees paid pursuant to §§ 14-19-1 et seq., however, shall be restricted to use  
23 solely and exclusively for financing directly, or as a pledge against bonds,  
24 revenue certificates and other obligations of indebtedness for the cost of  
25 capital improvements as specified in this section.

#### 26 § 14-19-15 EXEMPTIONS.

27 (A) The following types of new development shall be exempt from the  
28 impact fees imposed pursuant to §§ 14-19-1 et seq.:

29 (1) Any addition or expansion to a building which does not increase the  
30 number of service units attributable to the addition or expansion.

31 (2) Any accessory building for a subordinate or incidental use to a  
32 dwelling unit on residential property, or any expansion of an existing dwelling  
33 unit, which building does not constitute a new dwelling unit.

1 (3) Any reconstruction of a destroyed or partially destroyed building  
2 provided that the destruction of the building occurred other than by willful  
3 razing or demolition. The exemption only applies to the replacement of the  
4 previous facility. A change of land use or increase in dwelling units shall be  
5 addressed through § 14-19-13.

6 (4) Governmental entities, including the City, are not exempt from the  
7 payment of impact fees. However, no fire impact fee shall be assessed or  
8 collected for the construction of a fire capital improvement, and no police  
9 impact fee shall be assessed or collected for the construction of a police  
10 capital improvement.

11 (5) Full or partial waivers of impact fees shall be provided for affordable  
12 housing projects that meet the criteria set forth in the Development Process  
13 Manual.

14 (6) Full or partial waivers of impact fees shall be provided for projects  
15 within metropolitan redevelopment areas that meet the criteria set forth in the  
16 Development Process Manual. Notwithstanding the provisions of the  
17 Development Process Manual, such waivers shall be provided for both non-  
18 residential and residential development within the metropolitan redevelopment  
19 area that conforms to the metropolitan redevelopment area and any sector  
20 development or area plan applicable within the metropolitan redevelopment  
21 area.

22 (B) Applications for exemptions.

23 (1) An applicant for an exemption from impact fees shall have the  
24 burden of claiming and proving that a development project qualifies for any of  
25 the exemptions listed in this section prior to the issuance of a building permit.  
26 Such exemptions shall be granted or denied in writing by the impact fees  
27 administrator or his/her designee, subject to appeal pursuant to § 14-19-20.

28 (2) An application for an exemption shall be made on forms provided by  
29 the city. An application not filed before the issuance of a building permit shall  
30 be deemed waived.

31 (3) The city may adopt administrative procedures and guidelines to  
32 implement exemptions granted pursuant to this section.

33 § 14-19-16 INDEPENDENT FEE DETERMINATION.

1 An independent determination of impact fees may be made as follows:

2 (A) An applicant for development approval may elect to have an  
3 independent determination of the impact fees due for their development  
4 project in accordance with this section. Any applicant who makes this election  
5 shall prepare and submit to the impact fees administrator an independent fee  
6 study for the development project for which development approval is sought.

7 (B) All independent fee studies shall be prepared for review and submitted  
8 to the impact fees administrator no later than the time of application for a  
9 building permit. Any submission not so made shall be deemed waived.

10 (C) Each independent fee study shall comply in all respects with the  
11 requirements of this section and be organized in a manner that will allow the  
12 impact fees administrator to readily ascertain such compliance.

13 (D) Each independent fee study shall comply with all other written  
14 specifications as may be required by the impact fees administrator from time  
15 to time.

16 (E) The impact fees administrator shall determine the appropriate impact  
17 fees based on the results of the independent fee study and the applicable  
18 impact fee schedule established in § 14-19-13.

19 (F) Any impact fee calculated in accordance with this section and approved  
20 and certified in writing by the impact fees administrator shall be valid for four  
21 years following the certification. Following such period, a new application for  
22 an independent fee study must be made. Any change in the submitted  
23 development plan that in any material way affects said fee calculation shall  
24 void the certification of the fee.

25 (G) An independent fee determination study must address the expected  
26 impact of the development over the projected life of the structures on the  
27 system improvement. Any claim that the use or occupancy of the structures  
28 within the development will be different from normal use or occupancy must  
29 be supported by the appropriate zone change or other appropriate  
30 documentation that will support the claim.

31 § 14-19-17 ADMINISTRATION OF FEES.

32 (A) Collection of impact fees by the impact fees administrator or his/her  
33 designee. The impact fees administrator or his/her designee shall be

1 responsible for collection of the impact fees. Upon receipt of impact fees, the  
2 impact fees administrator or his/her designee shall place such funds into  
3 separate accounts as specified in §§ 14-19-1 et seq. All such funds shall be  
4 deposited in interest-bearing accounts in a bank authorized to receive  
5 deposits of city funds. Interest earned by each account shall be credited to  
6 that account and shall be used solely for the purposes specified for funds of  
7 such account.

8 (B) Establishment and maintenance of records. The impact fees  
9 administrator or his/her designee shall establish and maintain accurate  
10 financial records for the impact fees collected pursuant to §§ 14-19-1 et seq.  
11 which shall clearly identify for each impact fee payment the payor of the  
12 impact fee, the specific development project for which the fee was paid, the  
13 date of receipt of the impact fee, the amount received, the category of capital  
14 improvement for which the fee was collected, and the applicable service area.  
15 The financial records shall show the disbursement of all impact fees, including  
16 the date and purpose of each disbursement.

17 (C) Annual reports. The impact fees administrator or his/her designee shall  
18 prepare and present to the City Council an annual report describing the  
19 amount of any impact fees collected, encumbered and used during the  
20 preceding year by category of capital improvement and service area.

21 (D) Public inspection. The records of the accounts shall be available for  
22 public inspection and copying at the city during ordinary city business hours.

23 (E) Expenses of administration. An amount not to exceed 3% of the total of  
24 all impact fees collected may be allocated and applied for administration of §§  
25 14-19-1 et seq. for city employees who are qualified professionals.

26 § 14-19-18 REFUNDS.

27 (A) The current owner of record of property on which an impact fee has  
28 been paid shall be entitled to a refund of such fee if:

29 (1) The current owner of record of the property submits an application  
30 for refund within one year of the event giving rise to the right to claim a  
31 refund.

32 (2) All or a portion of the impact fees paid by the development are not  
33 spent within seven years after the date of payment. The determination of



1 whether the impact fees paid by a development have been spent shall be  
2 determined using a first in, first out accounting standard.

3 (3) Existing city facilities of the type for which the impact fees have been  
4 paid are available to provide service to the development, but service from  
5 such facilities is not provided by the city.

6 (4) Existing city facilities of the type for which the impact fees have been  
7 paid are not available to the development, and the construction of  
8 improvements that would serve the development are not completed and  
9 available to provide service to the development within seven years from the  
10 date of payment of the impact fees.

11 (B) An application for refund must be submitted to the impact fees  
12 administrator or his/her designee within the time period specified in §14-19-18

13 (A) (1) on a form provided by the city for such purpose and must contain  
14 information and documentation sufficient to permit the impact fees  
15 administrator to determine whether the refund claimed is proper and, if so, the  
16 amount of such refund.

17 (C) In no event shall an applicant be entitled to a refund for impact fees  
18 assessed and paid to recover the costs of excess capacity in existing system  
19 improvements.

20 (D) Within 30 days from the date of receipt of an application for refund, the  
21 impact fees administrator or his/her designee must provide the applicant, in  
22 writing, with a decision on the refund request including the reasons for the  
23 decision. If a refund is due the applicant, the city shall issue a refund payment  
24 to the applicant within 30 days of the impact fees administrator's written  
25 decision on the refund request.

26 (E) The applicant may appeal the determination of the impact fees  
27 administrator within 30 days of such determination, as provided in § 14-19-20.

28 (F) A refund shall bear interest calculated from the date of collection of the  
29 impact fee to the date of refund at the statutory rate as set forth in Section 56-  
30 8-3 NMSA 1978.

31 § 14-19-19 CREDITS.

32 The city shall grant credit against impact fees imposed pursuant to §§ 14-  
33 19-1 et seq. under the following circumstances:

1 (A) Credits shall be granted only for the value of any construction of  
2 improvements or contribution or dedication of land, easements or money for  
3 system improvements or system studies listed on the CCIP, made by a  
4 developer or his predecessor in title or interest as a condition of development  
5 approval or pursuant to a development agreement with the city, or for  
6 payments made or to be made pursuant to the terms of any special  
7 assessment district (SAD), Public Improvement District (PID), Subdivision  
8 Improvement Agreement (SIA), Business Improvement District (BID),  
9 Metropolitan Redevelopment District (MRD) or other program by which off-site  
10 system improvements are paid or constructed, provided the projects are listed  
11 on the CCIP.

12 (B) Credits shall only be granted for system improvements listed on the  
13 CCIP or system studies listed on the CCIP for the same category of system  
14 improvements and within the same service areas for which impact fees are  
15 imposed pursuant to §§ 14-19-1 et seq.

16 (C) Credits shall only be granted for contributions, dedications or  
17 improvements accepted by the city. Cash contributions shall be deemed  
18 accepted when payment is received and accepted by the city. Land or  
19 easements shall be deemed accepted when conveyed or dedicated to and  
20 accepted by the city. All conveyances and dedications of land or easements  
21 shall be conveyed to the city free and clear of all liens, claims and  
22 encumbrances. Improvements shall be deemed accepted when:

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

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

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

31 (D) Notwithstanding division (C) of this section, the city may, by agreement,  
32 grant credits for system improvements which have not been completed if the  
33 applicant for such credits provides the city with acceptable security to ensure

1 completion of the system improvements in the form of an irrevocable letter of  
2 credit for the benefit of the city in an amount determined by the impact fees  
3 administrator to be equal to 125% of the estimated completion cost of the  
4 system improvements, including land acquisition costs and planning and  
5 design costs. The value of such system improvements for computing credits  
6 shall be their estimated completion cost, based on documentation acceptable  
7 to the city.

8 (E) No credits shall be granted for:

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

10 (2) Project improvements;

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

14 (4) System improvements made in excess of applicable city standards,  
15 unless such system improvements are listed on the CCIP and the higher  
16 construction standard is required as a condition of development approval; or

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

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

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

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

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

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

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1 (5) The city must review the system improvements plan, verify costs and  
2 time schedules, determine if the system improvements are eligible system  
3 improvements, determine if the completed improvement meets applicable city  
4 standards, calculate the applicable impact fees otherwise due, determine the  
5 amount of the credits for such system improvements to be applied to the  
6 otherwise applicable impact fees, and determine if excess credits are created.

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

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

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

15 (H) The value of credits and the calculation of excess credits shall be  
16 determined by the impact fees administrator, in writing, subject to appeal  
17 pursuant to § 14-19-20.

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

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

22 (2) The value of unimproved land or easements shall be:

23 (a) The fair market value of the land or easement prior to any  
24 increase in value resulting from development approval demonstrated by an  
25 appraisal prepared by an appraiser acceptable to the city; or

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

29 (3) The value of system improvements shall be:

30 (a) The fair market value of the completed system improvement at  
31 the time of acceptance by the city demonstrated by an appraisal prepared by  
32 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 his/her  
7 own expense the appraisals, construction and acquisition cost documentation  
8 and other documentation necessary for the valuation of credits by the impact  
9 fees administrator. The city shall not be obligated to grant credits to any  
10 applicant who cannot provide such documentation in such form as the impact  
11 fees administrator may require.

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

18 (7) The impact fees administrator may accept an appraisal that was  
19 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 city's  
23 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 be  
27 applied as follows:

28 (1) No credit shall be provided for road or trail right-of-way dedication  
29 after the effective date of this ordinance, since the cost of right-of-way has not  
30 been included in the updated calculation of those fees.

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

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

3 (3) Credits shall only be applied to offset impact fees for projects within  
4 the same service area for which the credit was granted. Credits shall not be  
5 used to offset impact fees for other categories of system improvements or for  
6 other service areas. However, credits can be applied within new service areas  
7 if the improvement generating that credit is within that new service area.

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

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

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

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

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

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

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

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

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

21 (f) Excess credits must be applied for, used, sold, or redeemed, if at  
22 all, within fifteen years after their issuance. Excess credits issued prior to  
23 adoption of this ordinance shall be permitted to be used, sold or redeemed  
24 within fifteen years after the adoption of this ordinance.

25 (g) Excess credits shall only be used, sold, or redeemed within the  
26 same service area for which the credit was granted. However, excess credits  
27 can be transferred within new service areas if the improvement generating the  
28 credit is within that new service area. Excess credits shall not be used to  
29 offset impact fees for other categories of system improvements or for other  
30 service areas.

31 § 14-19-20 ADMINISTRATIVE APPEALS.

32 (A) Notice of appeal; filing; fee. An applicant who chooses to appeal the  
33 assessment or calculation of impact fees; determination of exemptions,

1 credits, excess credits; or other decision of the impact fees administrator shall  
2 submit a notice of appeal and payment of a nonrefundable processing fee to  
3 the impact fees administrator or his/her designee within 30 days following the  
4 date of the decision or determination of the impact fees administrator giving  
5 rise to the appeal.

6 (B) Bond. If the notice of appeal is accompanied by a bond or other  
7 sufficient surety satisfactory to the City Attorney, in an amount equal to the  
8 impact fee assessed, the City Building Official or his/her duly designated  
9 agent shall issue the building permit.

10 (C) Staying of impact fee collection; requirement. The filing of a notice of  
11 appeal shall not stay the collection of the impact fee unless a bond or other  
12 sufficient surety has been filed.

13 (D) Action by Environmental Planning Commission. Appeals shall be  
14 considered by the Environmental Planning Commission in accordance with  
15 the rules and regulations of that administrative body. Upon hearing such  
16 appeals, the Environmental Planning Commission may affirm, change or  
17 modify the decision of the impact fees administrator or, in lieu thereof, make  
18 such other or additional determination as it deems proper. The decision of the  
19 Environmental Planning Commission upon the appeal shall be in writing,  
20 concurred in by a majority of the members present, which shall forthwith  
21 transmit a copy of the decision to the applicant and to the impact fees  
22 administrator.

23 (E) Appeal of Environmental Planning Commission's decision. Either the  
24 applicant or the impact fees administrator may appeal the decision of the  
25 Environmental Planning Commission to the City Council within 30 days  
26 following the decision of the Environmental Planning Commission.

27 (F) Final decision by City Council. The City Council shall consider the  
28 appeal in accordance with the rules and regulations of that governing body.  
29 The decision of the City Council shall, in all instances, be the final  
30 administrative decision and shall be subject to judicial review in accordance  
31 with applicable law.

32 § 14-19-21 PROMULGATION OF RULES.

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1 (A) The Mayor is responsible for the promulgation of rules necessary to  
2 fulfill the intent of §§ 14-19-1 et seq. Authorized rules shall be published in the  
3 Development Process Manual and shall have the same effect as the provisions  
4 within §§ 14-19-1 et seq. The following process shall be observed hereafter in  
5 rulemaking pursuant to §§ 14-19-1 et seq.

6 (B) Prior to the adoption, amendment or repeal of any rule, the Mayor shall,  
7 at least 30 days prior to the proposed action:

8 (1) Publish notice of the proposed action in a daily newspaper of  
9 general circulation in the city; and

10 (2) Notify any person or group filing written request, such request to be  
11 renewed yearly to assure notice of proposed action which may affect that  
12 person or group, notification being by mail or other method to the last address  
13 specified by the person or group. A fee may be charged those requesting  
14 notice to cover reasonable city costs.

15 (3) The notice of proposed action shall:

16 (a) State the manner in which data, views or arguments may be  
17 submitted to the Mayor by any interested person;

18 (b) Describe the substance of the proposed action or state the  
19 subjects and issues involved; and

20 (c) Include specific reference to the division of this article under  
21 which the rule is proposed.

22 (C) All interested persons shall be given reasonable opportunity to submit  
23 data, views, and arguments concerning any proposed rule change. If the  
24 Mayor finds that oral presentation is unnecessary or impracticable, the Mayor  
25 may require that the presentation be made in writing. The Mayor shall  
26 consider fully all submissions related to the proposed rule change. All  
27 persons making a presentation, verbally or in writing, shall promptly be given  
28 a copy of the decision, by mail or otherwise.

29 (D) Each rule or set of rules adopted is effective upon recording as an  
30 adopted rule with the City Clerk and promulgated as an amendment of the  
31 Development Process Manual or as specified in the rule itself.

32 (E) Regarding filing of rules and copying:

1 (1) The Mayor shall promptly record with the City Clerk one copy of each  
2 proposed rule, adopted final rule, or amendment or repeal thereof, including  
3 all rules existing on the effective date of §§ 14-19-1 et seq.

4 (2) The Mayor shall promptly publish each final rule or amendment, or  
5 repeal thereof, including all rules existing on the effective date of §§ 14-19-1 et  
6 seq., as amendments to the Development Process Manual.

7 (3) The City Clerk shall maintain and update as necessary an index of  
8 adopted rules on file in the Clerk's office and shall make copies of the rules  
9 available to the public. The City Clerk shall allow the public to make copies of  
10 rules recorded in the Clerk's office. A reasonable fee may be charged.

11 **§ 14-19-22 EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION**  
12 **REGULATIONS.**

13 Sections 14-19-1 et seq. shall not affect, in any manner, the permissible use  
14 of property, density of development, design and improvement standards and  
15 requirements, or any other aspect of the development of land or provision of  
16 capital improvements subject to the zoning and subdivision regulations of the  
17 city, which shall be operative and remain in full force and effect without  
18 limitation with respect to all such development.

19 **§ 14-19-23 IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL**  
20 **REQUIREMENT TO CITY REGULATIONS.**

21 The impact fee is additional and supplemental to, and not in substitution of,  
22 any non-financial requirements imposed by the city on the development of  
23 land or the issuance of building permits. Payment of the impact fee shall not  
24 waive or otherwise alter compliance with zoning or other city requirements. It  
25 is intended to be consistent with and to further the objectives and policies of  
26 the Comprehensive Plan and other city policies, ordinances and resolutions  
27 by which the city seeks to ensure the provision of public facilities in  
28 conjunction with the development of land.

29 **§ 14-19-24 REVIEW AND AMENDMENT.**

30 The advisory committee shall review, update and propose any amendments  
31 to the land use assumptions and the impact fees at least every five years from  
32 the effective date. The advisory committee shall be consulted during such  
33 review and file its written comments concerning any amendments with the

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1 City Council. The City Council shall take action on any proposed amendments  
2 consistent with the provisions of the Development Fees Act.

3 **§ 14-19-98 ENFORCEMENT.**

4 The enforcement of §§ 14-19-1 et seq. will be the responsibility of the  
5 impact fees administrator and such city personnel as he or she may designate  
6 from time to time.

7 **§ 14-19-99 PENALTY.**

8 The city shall have the power to sue in law or equity for relief in civil court  
9 to enforce §§ 14-19-1 et seq. including, but not limited to, injunctive relief to  
10 enjoin and restrain any person from violating the provisions of §§ 14-19-1 et  
11 seq. and to recover such damages as may be incurred by the implementation  
12 of specific corrective actions. Knowingly furnishing false information to the  
13 city on any matter relating to the administration of §§ 14-19-1 et seq. shall  
14 constitute an actionable violation. The impact fees administrator may revoke  
15 or withhold the issuance of any building permit or other development permits  
16 if the provisions of §§ 14-19-1 et seq. have been violated by the owner or  
17 his/her assigns. Subject to applicable law, the city shall have the right to  
18 inspect the lands affected by §§ 14-19-1 et seq. and shall have the right to  
19 issue cease and desist orders, stop work orders and other appropriate  
20 citations for violations.”

21 **SECTION 3. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,  
22 clause, word or phrase of this ordinance is for any reason held to be invalid or  
23 unenforceable by any court of competent jurisdiction, such decision shall not  
24 affect the validity of the remaining provisions of this ordinance. The Council  
25 hereby declares that it would have passed this ordinance and each section,  
26 paragraph, sentence, clause, word or phrase thereof irrespective of any  
27 provision being declared unconstitutional or otherwise invalid.

28 **SECTION 4. COMPILATION.** Section 2 of this ordinance shall be  
29 incorporated in and made part of the Revised Ordinances of Albuquerque,  
30 New Mexico, 1994.

31 **SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect five days  
32 after publication by title and general summary.

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