City of Albuquerque

City of Albuquerque
Government Center
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Title: F/S Deleting The Current Chapter 14, Article 19 ROA 1994, The Four Existing Ordinances That Adopted Impact Fees; Adopting A New Chapter 14, Article 19 ROA 1994 To Be Known As The "Impact Fee Ordinance" (Jones, Winter)

Sponsors: Trudy E. Jones, Brad Winter

Indexes:

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Attachments: 1. O-38.pdf, 2. O-38 Majority Report - Impact Fee Committee.pdf, 3. O-38 Minority Report - Impact Fee Committee.pdf, 4. O-38fs.pdf, 5. O-38fsfinal.pdf, 6. FS O-38Enacted

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11/19/2012	1	City Council	Substituted	Pass
11/19/2012	1	City Council	Do Pass as Substituted, as Amended	Pass
11/19/2012	1	City Council	Amended	Pass
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11/19/2012	1	City Council	Motion	Fail
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11/19/2012	1	City Council	Amended	Fail
10/16/2012	1	Committee of the Whole	Defer	
9/17/2012	1	President	Referred	
9/17/2012	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE

TWENTIETH COUNCIL

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

SPONSORED BY: Trudy E. Jones and Brad Winter

ORDINANCE

F/S Deleting The Current Chapter 14, Article 19 ROA 1994, The Four Existing Ordinances That Adopted Impact Fees; Adopting A New Chapter 14, Article 19 ROA 1994 To Be Known As The "Impact Fee Ordinance" (Jones, Winter)

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

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

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Ordinances of Albuquerque 1994, Sections 14-19-1-1 through 14-19-4-99 ROA 1994, concerning impact fees is hereby repealed.

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

“§ 14-19-1 SHORT TITLE.

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

§ 14-19-2 INTENT AND PURPOSES.

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

(B) Sections 14-19-1 et seq. are intended to assess and collect impact fees in an amount based upon appropriate service units for capital facilities in order to finance such facilities, the demand for which is generated by new development in the city. The purpose of §§ 14-19-1 et seq. is to ensure the provision of an adequate level of service for capital facilities throughout the city so that new development may occur in a manner consistent with the city's Planned Growth Strategy and the Albuquerque/Bernalillo County Comprehensive Plan. The City Council intends, by enactment of §§ 14-19-1 et seq., to require new development to bear an amount not to exceed its proportionate share of the costs related to the additional capital facilities that are rationally related to such new development in accordance with applicable law. Only capital improvement needs that are rationally related to new development in accordance with applicable law will be paid by impact fees. Impact fees shall not exceed the cost to pay for a proportionate share of the cost of system improvements based upon service units needed to serve new development. Subject to the provisions of §§ 14-19-1 et seq. and the Development Fees Act (Sections 5-8-1 et seq. NMSA

1978), impact fees shall be spent on new or enlarged capital facilities and equipment which benefit those developments which pay the fees.

§ 14-19-3 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

(7) TRAIL CAPITAL IMPROVEMENTS. Trail improvements.

CAPITAL IMPROVEMENTS PLAN (CIP). A document that meets the requirements of Section 5-8-6 of the Development Fees Act (NMSA 1978), including a description of existing capital facilities for each service area, an analysis of the capacity and current usage of existing facilities, a description of capital improvements necessitated by and attributable to growth in the service

area, a demand or equivalency table, projected service units in the service area based on the land use assumptions, the projected demand for capital improvements required to serve the new service units, and anticipated sources of funding independent of impact fees. This document includes an initial list of capital improvements on which impact fees may be spent, which is subsequently incorporated into the COMPONENT CAPITAL IMPROVEMENTS PLAN (CCIP).

CITY. The City of Albuquerque.

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

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

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

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

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

COUNTY. The County of Bernalillo.

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE. July 1, 2005.

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

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

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

FIRST IN, FIRST OUT means expenditures of impact fee revenues reflecting the chronological

order in which the impact fee revenues were collected.

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

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

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

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

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

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

INDEPENDENT FEE STUDY. The engineering, financial and/or economic documentation prepared by an applicant in accordance with § 14-19-17 to allow an individual determination of an impact fee other than by use of the applicable fee schedule.

INDUSTRIAL/WAREHOUSE. An establishment primarily engaged in the fabrication, assembly or processing of goods, or the display, storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. Typical uses include manufacturing plants, welding shops, wholesale bakeries, dry cleaning plants, bottling

works, wholesale distributors, storage warehouses, moving and storage firms, trucking and shipping operations and major mail processing centers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Drainage. Acres of impervious cover.

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

(4) Open space. Equivalent dwelling units.

(5) Trails. Equivalent dwelling units.

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

(7) Police. Functional population.

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

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

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

WAIVE. To relinquish or abandon a claim or right.

§14-19-4 AUTHORITY.

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

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

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

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

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

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

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

(N) The City Council has carefully considered the Report prepared by Integrated Utilities Group, Inc. for the City of Albuquerque titled “Drainage Impact Fee Study Final Report” dated September 2004, and as amended November 2004, and further finds that said Report sets forth

reasonable and equitable methodology and assumptions consistent with the New Mexico Development Fees Act for the formulation and imposition of a Drainage Facilities Development Impact Fee Program for the City of Albuquerque.

(O) The City Council has carefully considered the land use assumptions and capital improvements plan report (Impact Fee Study) dated September 2012, prepared by Duncan Associates for the City of Albuquerque titled “Impact Fee Land Use Assumptions and Capital Improvements Plan, 2012-2022,” and further finds that said Impact Fee Study sets forth reasonable and equitable methodologies and assumptions consistent with the New Mexico Development Fees Act for the update of the road, park, open space, trail, fire and police impact fees for the City of Albuquerque.

§ 14-19-7 LAND USE ASSUMPTIONS.

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

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

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

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

§ 14-19-8 CAPITAL IMPROVEMENTS PLAN.

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

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

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

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

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

§ 14-19-9 ADVISORY COMMITTEE.

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

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

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

(C) Monitor and evaluate implementation of the CCIP;

(D) File annual written reports with respect to the progress of the CCIP and report to the city

any perceived inequities in implementing the plan or imposing the impact fees;

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

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

§ 14-19-10 ESTABLISHMENT OF SERVICE AREAS.

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

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

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

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

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

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

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

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

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

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

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

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

§ 14-19-11 IMPOSITION.

(A) Any developer engaging in new development after the effective date of §§ 14-19-1 et seq. shall pay impact fees in the manner and in the amounts required in §§ 14-19-1 et seq., unless

otherwise specified in this section. No building permit shall be issued for development within the city unless the impact fees are assessed and collected pursuant to §§ 14-19-1 et seq.

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

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

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

(D) Nothing in §§ 14-19-1 et seq. shall prevent the city from requiring a developer to construct reasonable project improvements in connection with the new development.

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

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

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

§ 14-19-12 ASSESSMENT AND COLLECTION.

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

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

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

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

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

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

(1) Determine the applicable service area;

(2) Determine the applicable land use category;

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

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

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

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

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

(H) When a change of use, redevelopment or modification of an existing use or building requires the issuance of a building permit and results in a net increase in gross floor area the

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

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

§ 14-19-13 FEE SCHEDULES.

The following impact fees are hereby imposed upon all new development in the city, excluding in Mesa del Sol, that occurs on or subsequent to the effective date of this ordinance, unless fees were assessed under the previous fee schedule within four years prior to the date of the completed building permit application. Assessment of impact fees prior to building permit shall be based on 50% of the maximum fees contained in the reports referenced in §14-19-6 (N) and (0) as shown in the following impact fee schedules. Assessment and collection at time of building permit shall be based on the following phase-in schedule: Prior to January 1, 2014, fees shall be assessed and collected at 20% of the rates shown in the fee schedules;

From January 1, 2014 through December 31, 2014, fees shall be assessed and collected at 40% of the rates shown in the fee schedules;

From January 1, 2015 through December 31, 2015, fees shall be assessed and collected at 60% of the rates shown in the fee schedules;

From January 1, 2016 through December 31, 2016, fees shall be assessed and collected at 80% of the rates shown in the fee schedules;

From January 1, 2017 onward, fees shall be assessed and collected at 100% of the rates shown in the fee schedules.

(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

(B) Drainage impact fees.

Service Area	Fee per Impervious Acre
Central City	$0
Far Northeast	$5,104
Tijeras	$5,104
Southwest Mesa	$5,104
Northwest Mesa	$5,104

(C) Fire impact fees.

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

(D) Police impact fees.

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

(E) Park impact fees.

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

(F) Open space impact fees.

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

(G) Trail impact fees.

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

§ 14-19-14 USE OF FEES COLLECTED.

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

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

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

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

(4) Trail impact fees collected on or after the effective date of this ordinance shall not be expended for right-of-way acquisition. The cost of right-of-way has not been included in the updated trail impact fees, and credit will no longer be provided to developers who make right-of-way dedications for trails.

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

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

impact fee study;

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

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

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

§ 14-19-15 EXEMPTIONS.

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

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

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

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

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

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

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

(B) Applications for exemptions.

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

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

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

§ 14-19-16 INDEPENDENT FEE DETERMINATION.

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

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

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

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

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

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

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

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

§ 14-19-17 ADMINISTRATION OF FEES.

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

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

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

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

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

§ 14-19-18 REFUNDS.

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

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

(2) All or a portion of the impact fees paid by the development are not spent within seven years after the date of payment. The determination of whether the impact fees paid by a development have been spent shall be determined using a first in, first out accounting standard.

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

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

(B) An application for refund must be submitted to the impact fees administrator or his/her designee within the time period specified in §14-19-18 (A) (1) on a form provided by the city for such purpose and must contain information and documentation sufficient to permit the impact fees administrator to determine whether the refund claimed is proper and, if so, the amount of such refund.

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

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

(E) The applicant may appeal the determination of the impact fees administrator within 30 days

of such determination, as provided in § 14-19-20.

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

§ 14-19-19 CREDITS.

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

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

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

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

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

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

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

(D) Notwithstanding division (C) of this section, the city may, by agreement, grant credits for system improvements which have not been completed if the applicant for such credits provides

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

(E) No credits shall be granted for:

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

(2) Project improvements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The value of system improvements shall be:

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

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

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

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

(6) In lieu of the appraisals referred to in divisions (I)(2)(a) and (I)(3)(a) of this section, the

impact fees administrator may accept an appraisal prepared by an appraiser acceptable to the city that demonstrates the combined fair market value of land, easements or completed improvements at the time of acceptance by the city, less the increase in land value resulting from development approval.

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

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

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

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

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

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

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

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

-1 et seq.

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

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

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

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

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

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

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

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

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

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

(f) Excess credits must be applied for, used, sold, or redeemed, if at all, within seven fifteen years after their issuance. Excess; provided that excess credits issued prior to adoption of

this ordinance or within one year September 23, 2009shall be permitted to be used, sold or redeemed within nine fifteen years after the adoption of this ordinanceafter their issuance.

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

§ 14-19-20 ADMINISTRATIVE APPEALS.

(A) Notice of appeal; filing; fee. An applicant who chooses to appeal the assessment or calculation of impact fees; determination of exemptions, credits, excess credits; or other decision of the impact fees administrator shall submit a notice of appeal and payment of a nonrefundable processing fee to the impact fees administrator or his/her designee within 30 days following the date of the decision or determination of the impact fees administrator giving rise to the appeal.

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

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

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

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

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

with applicable law.

§ 14-19-21 PROMULGATION OF RULES.

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

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

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

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

(3) The notice of proposed action shall:

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

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

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

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

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

(E) Regarding filing of rules and copying:

(1) The Mayor shall promptly record with the City Clerk one copy of each proposed rule,

adopted final rule, or amendment or repeal thereof, including all rules existing on the effective date of §§ 14-19-1 et seq.

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

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

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

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

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

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

§ 14-19-24 REVIEW AND AMENDMENT.

The advisory committee shall review, update and propose any amendments to the land use assumptions and the impact fees at least every five years from the effective date. The advisory committee shall be consulted during such review and file its written comments concerning any amendments with the City Council. The City Council shall take action on any proposed amendments consistent with the provisions of the Development Fees Act.

§ 14-19-98 ENFORCEMENT.

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

§ 14-19-99 PENALTY.

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

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

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

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

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