

ADOPTED BY THE
MAYOR AND COUNCIL

October 9, 2014

ORDINANCE NO. 11203

RELATING TO DEVELOPMENT IMPACT FEES FOR FIRE FACILITIES, PARKS AND RECREATIONAL FACILITIES, POLICE FACILITIES AND STREET FACILITIES; REPEALING TUCSON CODE, CHAPTER 23A, DEVELOPMENT COMPLIANCE CODE, ARTICLE III, IMPACT FEES, DIVISIONS 1, 2, AND 3; ADOPTING A NEW ARTICLE III, DEVELOPMENT IMPACT FEE REGULATIONS, DIVISIONS 1, 2, AND 3; ADOPTING A NEW DIVISION 4 OF ARTICLE III, CHAPTER 23A, DEVELOPMENT FEE SCHEDULES AND EFFECTIVE DATES; REPEALING TUCSON CODE CHAPTER 23A, DEVELOPMENT COMPLIANCE CODE, ARTICLE IV, DIVISION 2, "LISTING OF WORDS AND TERMS"; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS the City of Tucson has the authority to assess development impact fees for Necessary Public Services including fire facilities, street facilities, parks and recreational facilities, and police facilities pursuant to Section 9-463.05 of the Arizona Revised Statutes; and

WHEREAS the protection of the health, safety, and general welfare of the citizens of the City requires that the capacity of fire facilities, street facilities, parks and recreational facilities, and police facilities of the City be expanded to meet the demands of new development; and

WHEREAS the creation of an equitable development impact fee system enables the City to insure that the appropriate proportionate share of the costs of required Necessary Public Services is funded by the developments that create the need; and

WHEREAS the development impact fees described in this Ordinance have been developed in accordance with Section 9-463.05 of the Arizona Revised Statutes, and do not exceed the capital costs required to serve the development that will pay the fees; and

WHEREAS the City has the legal authority to provide for access to public subsidized housing and by doing so provides for the health, safety and general welfare of its citizens; and

WHEREAS the development impact fees proposed herein recognize the credits and offsets against the fee for the contributions made or to be made in the future in cash or by taxes, fees or assessments by property owners toward the capital costs of Necessary Public Services covered by the fee; and

WHEREAS there is both a rational nexus and a proportionality between the development impacts created by each type of new development covered by this Ordinance and the development impact fees that such development will be required to pay; and

WHEREAS this Ordinance creates a system by which development impact fees paid by impact-generating development within each Service Area will be used to expand the Necessary Public Services within each Service Area, so that the development that pays each fee will receive a corresponding benefit within a reasonable period of time after the fee is paid; and

WHEREAS, on April 18, 2014 and May 1, 2014, the City released to the public the Land Use Assumptions and Infrastructure Improvements Plans for fire facilities, street facilities, parks and recreational facilities, and police facilities; and

WHEREAS, on June 30, 2014, the Mayor and Council conducted a duly noticed public hearing on the Land Use Assumptions and Infrastructure Improvements Plans; and

WHEREAS, at a duly noticed public meeting on August 5, 2014, the Mayor and Council adopted the Land Use Assumptions and Infrastructure Improvements Plans and

notified the public of its intention to adopt the proposed development impact fees for fire facilities, street facilities, parks and recreational facilities, and police facilities; and

WHEREAS, on September 9, 2014, the Mayor and Council conducted a duly noticed public hearing on the proposed development impact fees and the Ordinance; and

WHEREAS, at a duly noticed public meeting on October 9, 2014 the Mayor and Council voted to adopt the proposed development impact fees and the Ordinance and;

WHEREAS, on December 23, 2014, the development impact fees and the Ordinance adopted by the Mayor and Council on October 9, 2014 become effective;

THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. Article III, of Tucson Code Chapter 23A is hereby repealed and replaced as follows:

“ARTICLE III, DEVELOPMENT IMPACT FEE REGULATIONS

DIVISION 1. APPLICABILITY AND INTENT

Sec. 23A-71 Title

Sec. 23A-72 Legislative Intent and Purpose

Sec. 23A-73 Definitions

Sec. 23A-74 Applicability

DIVISION 2. FEE CALCULATION

Sec. 23A-75 Authority for Development Impact Fees

Sec. 23A-76 Administration of Development Impact Fees

Sec. 23A-77 Land Use Assumptions

Sec. 23A-78 Infrastructure Improvements Plan

- Sec. 23A-79 Adoption and Modification Procedures
- Sec. 23A-80 Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions
- Sec. 23A-81 Collection of Development Impact Fees
- Sec. 23A-82 Development Impact Fee Credits and Credit Agreements
- Sec. 23A-83 Development Agreements
- Sec. 23A-84 Appeals
- Sec. 23A-85 Refunds of Development Impact Fees
- Sec. 23A-86 Oversight of Development Impact Fee Program

DIVISION 3. GENERAL PROVISIONS

- Sec. 23A-87 Miscellaneous Provisions
- Sec. 23A-88 Severability
- Sec. 23A-89 Violations

DIVISION 4. DEVELOPMENT IMPACT FEE SCHEDULES AND EFFECTIVE DATES

- Sec. 23A-90 Effective Dates
- Sec. 23A-91 Development Impact Fee Schedule Tables

DIVISION 1.

APPLICABILITY AND INTENT

23A-71 Title

This Article shall be known and may be cited as Tucson’s “Development Impact Fee Regulations,” and is referred to herein as “this Article.”

23A- 72 Legislative Intent And Purpose

- A. This Article is adopted for the purpose of promoting the health, safety, and general welfare of the residents of the City by:

1. Requiring new development to pay its proportionate share of the costs incurred by the City that are associated with providing Necessary Public Services to new development.
 2. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of A.R.S. § 9-463.05.
 3. Setting forth procedures for administering the development impact fee program, including mandatory offsets, credits, and refunds of development impact fees. All development impact fee assessments, offsets, credits, or refunds shall be administered in accordance with the provisions of this Article.
- B. This Article shall not affect the City's zoning authority or its authority to adopt or amend its General Plan, provided that planning and zoning activities by the City may require amendments to development impact fees as provided in Section 23A-77.

23A-73 Definitions

When used in this Article, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural. The definitions used in this Article shall supersede any definition for the same or similar term defined in Chapter 23A, Article IV.

1. Age Restricted Multi-Family Residential Land Use Subcategory: Development where more than a single residential unit occurs on a single lot in a community that restricts residents to 55-years or older with no one in the household under age 18. See ITE land use category 252.
2. Age Restricted Single Residential Land Use Subcategory: Detached and attached residential structures characteristic of a primary residence, even if the residence is subsequently rented, in a community that restricts residents to 55-years or older with no one in the household under age 18. See ITE land use category 251.
3. Applicant: A person who applies to the City for a Building Permit.
4. Appurtenance: Any fixed machinery or equipment, structure or other fixture, including integrated hardware, software or other components, associated with a Capital Facility that are necessary or convenient to the operation, use, or maintenance of a Capital Facility, but excluding replacement of the same after initial installation.
5. Aquatic Center: A facility primarily designed to host non-recreational competitive functions generally occurring within water, including, but not limited to, water polo games, swimming meets, and diving events. The facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities, including

but not limited to, locker rooms, offices, snack bars, bleacher seating, and shade structures.

6. **Building Permit:** Any permit issued by the City that authorizes vertical construction, increases square footage, or authorizes changes to land use.
7. **Capital Facility:** An asset having a Useful Life of three or more years that is a component of one or more categories of Necessary Public Service provided by the City. A Capital Facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of buildings and facilities, improvements to existing facilities, improvements to or expansions of existing facilities, and associated financing and professional services. "Infrastructure" shall have the same meaning as "Capital Facilities."
8. **Category of Necessary Public Service:** A Category of Necessary Public Services for which the City is authorized to assess development impact fees, as identified in the Infrastructure Improvements Plans.
9. **Category of Development:** A specific land use category against which a development impact fee is calculated and assessed. The City assesses development impact fees against residential, commercial, retail, high traffic retail, industrial, general office, medical facilities, institutional, and recreational land use categories, each of which is defined in this list of definitions.
10. **City:** The City of Tucson, Arizona.
11. **Commercial Land Use Category:** Includes all non-residential uses including, but not limited to, land use classes that permit facilities for the buying or selling of commodities or services, such as consulting, technical, transportation, and repair services, and similar land uses as determined by the Development Impact Fee Administrator.
12. **Congregate Care Land Use Subcategory:** Group housing with a central eating facility, smaller rooms, and care for its tenants. This includes nursing homes, group homes, prisons, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 253, 254, 255, 571, and 620.
13. **Credit:** A reduction in an assessed development impact fee resulting from developer contributions to, payments for, construction of, or dedications for Capital Facilities included in an Infrastructure Improvements Plan pursuant to Section 23A-82 (or as otherwise permitted by this Article).
14. **Credit Agreement:** A written agreement between the City and a developer or landowner that allocates credits to the development

pursuant to Section 23A-82. A Credit Agreement may be included as part of a Development Agreement pursuant to Section 23A-83.

15. Credit Allocation: A term used to describe when credits are distributed to a particular development or parcel of land after execution of a Credit Agreement, but are not yet issued.
16. Credit Issuance: A term used to describe when the amount of an assessed development impact fee attributable to a particular development or parcel of land is reduced by applying a Credit Allocation.
17. Developer: An individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation, state agency, or other person or entity undertaking land development activity and their respective successors and assigns.
18. Development Agreement: An agreement prepared in accordance with the requirements of Section 23A-83, A.R.S. Section 9-500.05, and any applicable requirements of the City Code.
19. Development Impact Fee Administrator. The person designated by the City Manager and authorized to make determinations regarding the application, administration, and enforcement of the responsibilities and duties under this Article.
20. Direct Benefit: A benefit to a SU resulting from a Capital Facility that:
 - (a) addresses the need for a Necessary Public Service created in whole or in part by the SU; and that,
 - (b) meets either of the following criteria:
 - (i) the Capital Facility is located in the immediate area of the SU and is needed in the immediate area of the SU to maintain the Level of Service; or,
 - (ii) the Capital Facility substitutes for, or eliminates the need for a Capital Facility that would otherwise have been needed in the immediate area of the SU to maintain the City's Level of Service.
21. Dwelling Unit: A house, apartment, mobile home or trailer, group of rooms, or single room occupied as separate living quarters or, if vacant, intended for occupancy as separate living quarters.
22. Equipment: Machinery, tools, materials, and other supplies, not including Vehicles, that a Capital Facility needs to provide the Level of Service specified by the Infrastructure Improvements Plan, but excluding replacement of the same after initial development of the Capital Facility.
23. Excluded Library Facility: Library facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05,

including that portion of any library facility that exceeds 10,000 square feet, and Equipment, Vehicles or Appurtenances associated with Library operations.

24. Excluded Park Facility: Park and recreational facilities for which development impact fees may not be charged pursuant to A.R.S. § 9-463.05, including amusement parks, aquariums, Aquatic Centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, or zoo facilities.
25. Fee Report: A written report developed pursuant to Section 23A-79 that identifies the methodology for calculating the amount of each development impact fee, explains the relationship between the development impact fee to be assessed and the Plan-Based Cost per SU calculated in the Infrastructure Improvements Plan, and which meets other requirements set forth in A.R.S. Section 9-463.05.
26. Final Approval: For a nonresidential or multifamily development, the date of the approval of a site plan or, if no site plan is submitted for the development, the date of the approval of a final subdivision plat; for a single family residential development, the date that the first building permit is issued pursuant to an approved site plan or subdivision plat.
27. Financing or Debt: Any debt, bond, note, loan, interfund loan, fund transfer, or other debt service obligation used to finance the development or expansion of a Capital Facility.
28. Fire Protection: A category of Necessary Public Services that includes fire stations, fire Equipment, fire Vehicles and all Appurtenances for fire stations. Fire Protection does not include Vehicles or Equipment used to provide administrative services, or helicopters or airplanes. Fire Protection does not include any facility that is used for training firefighters from more than one station or substation.
29. General Office Land Use Category: Office uses, office parks, corporate headquarters, governmental offices, business parks, research and development parks, and similar uses as determined by the Development Impact Fee Administrator. Doctor, dentist, and veterinary offices fall under this category instead of medical facilities. See ITE land use categories 700-799.
30. General Plan: The most recently adopted Tucson General Plan.

31. Gross Impact Fee: The total development impact fee to be assessed against a Subject Development on a per unit basis, prior to subtraction of any Credits.
32. High Traffic Retail Land Use Category: Fast food restaurants, service stations, convenience stores, high-turnover restaurants, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 900-999.
33. Hotel/Motel Land Use Subcategory: Temporary lodging facilities such as hotels, motels, time shares/fractional shares, recreational Vehicle parks, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 310 and 320.
34. Industrial Land Use Category: Light and heavy industry, industrial parks, manufacturing, warehousing, utilities, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 100-199.
35. Infrastructure Improvements Plan: A document or series of documents that meet the requirements set forth in A.R.S. § 9-463.05, including those adopted pursuant to Section 23A-79 to cover any category or combination of categories of Necessary Public Services.
36. Institutional Land Use Category: Churches, schools, colleges, universities, cemeteries, libraries, fraternal lodges, day care centers, and similar uses as determined by the Development Impact Fee Administrator. See ITE Land Use Categories 500-599.
37. Interim Fee Schedule: The Tucson development impact fee schedule as established prior to January 1, 2012, in accordance with then-applicable law and which shall expire not later than August 1, 2014.
38. ITE Land Use Categories: Land use categories found in the Institute of Transportation Engineers' *Trip Generation Manual* (9th Edition, 2012).
39. Land Use Assumptions: Projections of changes in land uses, densities, intensities and population for a Service Area over a period of at least ten years as specified in Section 23A-77.
40. Level of Service: A quantitative and/or qualitative measure of a Necessary Public Service that is to be provided by the City to development in a particular Service Area, defined in terms of the relationship between service capacity and service demand, accessibility, response times, comfort or convenience of use, or other similar measures or combinations of measures. Level of Service may be measured differently for different categories of Necessary Public Services, as identified in the applicable Infrastructure Improvements Plan.

41. Medical Facilities Land Use Category: Hospitals, urgent care facilities, clinics, veterinary hospitals and clinics, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 600-699.
42. Multifamily Residential Land Use Subcategory: Predominantly rental multi-unit development such as apartments, student housing, mobile home parks, and similar uses as determined by the Development Impact Fee Administrator. See also ITE land use category 220.
43. Necessary Public Services: Has the meaning prescribed in A.R.S. Section 9-463.05(T)(7).
44. Offset: An amount which is subtracted from the overall costs of providing Necessary Public Services to account for those capital components of infrastructure or associated debt that have been or will be paid for by a development through taxes, fees (except for development impact fees), and other revenue sources, as determined by the City pursuant to Section 23A-78.
45. Parks and Recreational Facilities: A Category of Necessary Public Services including but not limited to parks, swimming pools, and related facilities and equipment located on real property not larger than 30 acres in area and park facilities larger than 30 acres where such facilities provide a Direct Benefit. Parks and Recreational Facilities do not include Excluded Park Facilities although Parks and Recreational Facilities may contain, provide access to, or otherwise support an Excluded Park Facility.
46. Plan-Based Cost per SU: The total future capital costs listed in the Infrastructure Improvements Plan for a Category of Necessary Public Services divided by the total new Equivalent Demand Units projected in a particular Service Area for that Category of Necessary Public Services over the same time period.
47. Pledged: Where used with reference to a development impact fee, a development impact fee shall be considered "pledged" where it was identified by the City as a source of payment or repayment for Financing or Debt that was identified as the source of financing for a Necessary Public Service for which a development impact fee was assessed pursuant to the then applicable provisions of A.R.S. Section 9-463.05.
48. Police Facilities: A Category of Necessary Public Services, including Vehicles and Equipment, that are used by law enforcement agencies to preserve the public peace, prevent crime, detect and arrest criminal offenders, protect the rights of persons and property, regulate and control motorized and pedestrian traffic, train sworn personnel, and/or provide and maintain police records, vehicles, equipment, and communications systems. Police Facilities do not

include Vehicles and Equipment used to provide administrative services, or helicopters or airplanes. Police Facilities do not include any facility that is used for training officers from more than one station or substation.

49. Public School: An institution of learning offering free education for all children, including some or all of the grades from kindergarten through 12th grade. The site may contain athletic, dining, assembly and recreation facilities.
50. Qualified Professional: A professional engineer, surveyor, financial analyst, or planner providing services within the scope of that person's license, education, or experience.
51. Recreational Land Use Category: Parks, camp grounds, golf courses, bowling alleys, movie theaters, racetracks, skating rinks, tennis courts, health/fitness clubs, community recreational centers, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 400-499.
52. Residential Land Use Category: Includes all uses in the single family residential, multifamily, hotel/motel, congregate care, Age Restricted Single Family Residential, and Age Restricted Multifamily Residential Land Use Subcategories.
53. Retail Land Use Category: Land uses providing retail sales, discount sales, and similar uses as determined by the Development Impact Fee Administrator. See ITE land use categories 800-899.
54. Service Area: Any specified area within the boundaries of the City within which:
 - (a) the City will provide a Category of Necessary Public Services to development at a planned Level of Service; and
 - (b) within which:
 - (i) a Substantial Nexus exists between the Capital Facilities to be provided and the development to be served, or
 - (ii) in the case of a Park Facility larger than 30 acres, a Direct Benefit exists between the Park Facilities and the development to be served, each as prescribed in the Infrastructure Improvements Plan.

Some or all of the Capital Facilities providing service to a Service Area may be physically located outside of that Service Area provided that the required Substantial Nexus or Direct Benefit is demonstrated to exist.

55. Service Unit (SU): A unit of development within a particular Category of Development, defined in terms of a standardized measure of the demand that a unit of development in that Category of Development

generates for Necessary Public Services in relation to the demand generated by a detached single-family Dwelling Unit. For all categories of Necessary Public Services, the SU factor for a detached single-family Dwelling Unit is one (1), while the SU factor for a unit of development within another Category of Development is represented as a ratio of the demand for each Category of Necessary Public Services typically generated by that unit as compared to the demand for such services typically generated by a detached single-family Dwelling Unit.

56. Single Family Residential Land Use Subcategory: Detached and attached residential structures characteristic of a primary residence, even if the residence is subsequently rented. Mobile homes and manufactured homes on individual parcels, and duplexes, triplexes, condominiums, and townhomes are assessed at the single family residential land use rate. See also ITE land use category 210.
57. Street Facilities: A Category of Necessary Public Services including arterial or collector streets or roads that have been designated on an officially adopted plan of the City, traffic signals, and rights-of-way and improvements thereon, including but not limited to, sidewalks, bus pullouts, grade separations, intersection reconstruction, lane additions, roadway extensions, bridges, culverts, irrigation, tiling, storm drains, and regional transportation facilities.
58. Student Housing: Includes rental housing exclusively for students engaged in post-secondary education consisting of four or more residential stories and located within one-half mile of an existing or adopted fixed rail public transit station.
59. Subject Development: A land area linked by a unified plan of development, which must be contiguous unless the land area is part of a Development Agreement executed in accordance with Section 23A-83.
60. Substantial Nexus: A Substantial Nexus exists where the demand for Necessary Public Services that will be generated by an SU can be reasonably quantified in terms of the burden it will impose on the available capacity of existing Capital Facilities, the need it will create for new or expanded Capital Facilities, and/or the benefit to the development from those Capital Facilities.
61. Swimming Pool: A public facility primarily designed and/or utilized for recreational non-competitive functions generally occurring within Water, including, but not limited to, swimming classes, open public swimming sessions, and recreational league swimming/diving events. The facility may be indoors, outdoors, or any combination thereof and includes all necessary supporting amenities.

62. Useful Life: The period of time in which an asset can reasonably be expected to be used under normal conditions, whether or not the asset will continue to be owned and operated by the City over the entirety of such period.
63. Vehicle: Any device, structure, or conveyance utilized for transportation in the course of providing a particular Category of Necessary Public Services at a specified Level of Service, excluding helicopters and other aircraft.

Section 23A-74 Applicability

- A. Except as otherwise provided in this Article, this Article shall apply to all new development within any Service Area, except for the development of any public school or City facility.
- B. The provisions of this Article shall apply to all of the territory within the corporate limits of the City.
- C. The Development Impact Fee Administrator is authorized to make determinations regarding the application, administration, and enforcement of the provisions of this Article.

DIVISION 2.

FEE CALCULATION

Section 23A-75 Authority for Development Impact Fees

- A. Fee Report and Implementation. The City may assess and collect a development impact fee for costs of Necessary Public Services, including all professional services required for the preparation or revision of an Infrastructure Improvements Plan, Fee Report, development impact fee, and required reports or audits conducted pursuant to this Article. Development impact fees shall be subject to the following requirements:
 1. The City shall develop and adopt a Fee Report that analyzes and defines the development impact fees to be charged in each Service Area for each Capital Facility category, based on the Infrastructure Improvements Plan and the Plan-Based Cost per SU.
 2. Development impact fees shall be assessed against all new commercial, residential, and industrial developments, provided that the City may assess different amounts of development impact fees against specific categories of development based on the actual burdens and costs that are associated with providing Necessary Public Services to that Category of Development. No

development impact fee shall exceed the Plan-Based Cost per SU for any Category of Development.

3. No development impact fees shall be charged, or credits issued, for any Capital Facility that does not fall within one of the categories of Necessary Public Services for which development impact fees may be assessed.
 4. Costs for Necessary Public Services made necessary by new development shall be based on the same Level of Service provided to existing development in the same Service Area. Development impact fees may not be used to provide a higher Level of Service to existing development or to meet stricter safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing Capital Facilities that are serving existing development.
 5. Development impact fees may not be used to pay the City's administrative, maintenance, or other operating costs.
 6. Projected interest charges and financing costs can only be included in development impact fees to the extent they represent principal and/or interest on the portion of any Financing or Debt used to finance the construction or expansion of a Capital Facility identified in the Infrastructure Improvements Plan.
 7. Except for any fees included on Interim Fee Schedules, all development impact fees charged by the City must be included in a "fee schedule" prepared pursuant to this Article and included in the Fee Report.
 8. All development impact fees shall meet the requirements of A.R.S. § 9-463.05.
- B. Costs per SU. The Fee Report shall summarize the costs of Capital Facilities necessary to serve new development on a per SU basis as defined and calculated in the Infrastructure Improvements Plan. The Fee Report shall also include all required Offsets and shall recommend a development impact fee structure for adoption by the City. The actual impact fees to be assessed shall be disclosed and adopted in the form of impact fee schedules.

Section 23A-76 Administration of Development Impact Fees

- A. Separate Accounts. Development impact fees collected pursuant to this Article shall be placed in separate, interest-bearing accounts for each Capital Facility category within each Service Area.

- B. Limitations on Use of Fees. Development impact fees and any interest on them collected pursuant to this Article shall be spent to provide Capital Facilities associated with the same Category of Necessary Public Services in the same Service Area for which they were collected, including costs of Financing or Debt used by the City to finance those Capital Facilities and other costs authorized by this Article that are included in the Infrastructure Improvements Plan.
- C. Time limit. Development impact fees collected after July 31, 2014 shall be used within ten years of the date upon which they were collected for all categories of Necessary Public Services.

Section 23A-77 Land Use Assumptions

- A. Consistency. The Infrastructure Improvements Plan shall be consistent with the City's current Land Use Assumptions for each Service Area and each Category of Necessary Public Services as adopted by the City pursuant to A.R.S. Section 9-463.05.
- B. Reviewing the Land Use Assumptions. Prior to the adoption or amendment of an Infrastructure Improvements Plan, the City shall review and evaluate the Land Use Assumptions on which the Plan is to be based to ensure that the Assumptions within each Service Area conform to the General Plan.
- C. Evaluating Necessary Changes. If the Land Use Assumptions upon which an Infrastructure Improvements Plan is based have not been updated within the last five years, the City shall evaluate the Land Use Assumptions to determine whether changes are necessary. If, after general evaluation, the City determines that the Land Use Assumptions are still valid, the City shall issue the report required in Section 23A-80.
- D. Required Modifications to Land Use Assumptions. If the City determines that changes to the Land Use Assumptions are necessary in order to adopt or amend an Infrastructure Improvements Plan, it shall make such changes as necessary to the Land Use Assumptions prior to or in conjunction with the review and approval of the Infrastructure Improvements Plan pursuant to Section 23A-80.

Section 23A-78 Infrastructure Improvements Plan

- A. Infrastructure Improvements Plan Contents. The Infrastructure Improvements Plan shall be developed by Qualified Professionals and may be based upon or incorporated within the City's capital improvements plan. The Infrastructure Improvements Plan shall specify the categories of Necessary Public Services for which the City will impose a development impact fee, and shall comply with all

statutory requirements of A.R.S. Section 9-463.05, including those in A.R.S. Sections 9-463.05(E)(1) through (7).

- B. Multiple Plans. An Infrastructure Improvements Plan adopted pursuant to this section may address one or more of the City's categories of Necessary Public Services in any or all of the City's Service Areas. Each Capital Facility shall be subject to no more than one Infrastructure Improvements Plan at any given time.
- C. Reserved Capacity. The City may reserve capacity in an Infrastructure Improvements Plan to serve one or more planned future developments, including capacity reserved through a Development Agreement pursuant to Section 23A-83. All reservations of existing capacity must be disclosed in the Infrastructure Improvements Plan at the time it is adopted.

Section 23A-79 Adoption and Modification Procedures

- A. Adopting or Amending the Infrastructure Improvements Plan. The Infrastructure Improvements Plan shall be adopted or amended subject to the following procedures:
 - 1. Major Amendments to the Infrastructure Improvements Plan. Except as provided in Section 23A-79(A)(2), the adoption or amendment of an Infrastructure Improvement Plan shall occur after one or more public hearings according to the following schedule, and may occur concurrently with the adoption of an update of the City's Land Use Assumptions as provided in Section 23A-77:
 - a. Sixty days before the first public hearing regarding a new or updated Infrastructure Improvements Plan, the City shall provide public notice of the hearing and post the Infrastructure Improvements Plan and the underlying Land Use Assumptions on its website; the City shall additionally make available to the public the documents used to prepare the Infrastructure Improvements Plan and underlying Land Use Assumptions and the amount of any proposed changes to the Plan-Based Cost per SU.
 - b. The City shall conduct a public hearing on the Infrastructure Improvements Plan and underlying Land Use Assumptions at least 30 days, but no more than 60 days, before approving or disapproving the Infrastructure Improvements Plan.
 - 2. Minor Amendments to the Infrastructure Improvements Plan. Notwithstanding the other requirements of this section, the City may update the Infrastructure Improvements Plan and/or its

underlying Land Use Assumptions without a public hearing if all of the following apply:

- a. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not add any new Category of Necessary Public Services to any Service Area.
 - b. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not increase the Level of Service to be provided in any Service Area.
 - c. Based on an analysis of the Fee Report and the City's adopted development impact fee schedules, the changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions would not, individually or cumulatively with other amendments undertaken pursuant to this subsection, have caused a development impact fee in any Service Area to have been increased by more than 5% above the development impact fee that is provided in the current development impact fee schedule.
 - d. At least 30 days prior to the date that the amendment pursuant to this section is adopted, the City shall post the proposed amendments on the City website.
- B. Amendments to the Fee Report. Any adoption or amendment of a Fee Report and fee schedule shall occur according to the following schedule:
1. The first public hearing on the Fee Report must be held at least 30 days after the adoption or approval of and Infrastructure Improvements Plan as provided in Section 23A-79(A). The City must give at least 30 days' notice prior to the hearing, provided that this notice may be given on the same day as the approval or disapproval of the Infrastructure Improvements Plan.
 2. The City shall make the Infrastructure Improvements Plan and underlying Land Use Assumptions available to the public on the City's website 30 days prior to the public hearing described in Section 23A-79(B)(1).
 3. The Fee Report may be adopted by the City no sooner than 30 days, and no later than 60 days, after the hearing described in subparagraph Section 23A-79(B)(1).
 4. The development fee schedules in the Fee Report adopted pursuant to this subsection shall become effective 75 days after adoption of the Fee Report by the City.

Section 23A-80 Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions

- A. Renewing the Infrastructure Improvements Plan. Except as provided in Section 23A-80(B), not later than every five years the City shall update the applicable Infrastructure Improvements Plan and Fee Report related to each Category of Necessary Public Services pursuant to Section 23A-79. The initial five year period begins on the day the Infrastructure Improvements Plan is adopted. Subsequent five-year periods shall be calculated from the date of the adoption of the Infrastructure Improvements Plan or the date of the adoption of the Fee Report, whichever occurs later.
- B. Determination of No Changes. Notwithstanding Section 23A-80(A), if the City determines that no changes to an Infrastructure Improvements Plan, underlying Land Use Assumptions, or Fee Report are needed, the City may elect to continue the existing Infrastructure Improvements Plan and Fee Report without amendment by providing notice as follows:
 - 1. Notice of the determination shall be published at least 180 days prior to the end of the five-year period described in Section 23A-80(A).
 - 2. The notice shall identify the Infrastructure Improvements Plan and Fee Report that shall continue in force without amendment.
 - 3. The notice shall provide a map and description of the Service Areas covered by the Infrastructure Improvements Plan and Fee Report.
 - 4. The notice shall identify an address to which any resident of the City may submit, within 60 days, a written request that the City update the Infrastructure Improvements Plan, underlying Land Use Assumptions, and/or Fee Report and the reasons and basis for the request.
- C. Response to Comments. The City shall consider and respond within 30 days to any timely requests submitted pursuant to Section 23A-80(B)(4).

Section 23A-81 Collection of Development Impact Fees

- A. Collection. Development impact fees, together with administrative charges assessed pursuant to 23A-81(A)(4), shall be calculated and collected prior to and as a condition of the issuance of permission to commence development; specifically:

1. Unless otherwise specified pursuant to a Development Agreement adopted pursuant to Section 23A-83, development impact fees shall be paid prior to and as a condition of the issuance of a Building Permit according to the current development impact Fee Schedule for the applicable Service Area(s) as adopted pursuant to this Article, or according to any other development impact fee schedule as authorized in this Article.
2. No Building Permit or certificate of occupancy shall be issued if a development impact fee is not paid as directed in the previous paragraphs.
3. If the Building Permit is for a change in the type of building use, an increase in square footage, or a change to land use, the development impact fee shall be assessed on the additional service units resulting from the expansion or change, and following the development impact fee schedule applicable to any new use type.
4. For issued permits that expire or are voided, development impact fees and administrative charges shall be as follows:
 - a. If the original permittee is seeking to renew an expired or voided permit, and the development impact fees paid for such development have not been refunded, the permittee shall pay the difference between any development impact fees paid at the time the permit was issued and those in the fee schedule at the time the permit is reissued or renewed.
 - b. If a new or renewed permit for the same development is being sought by someone other than the original permittee, the new permit Applicant shall pay the full development impact fees specified in the fee schedule in effect at the time that the permits are reissued or renewed. If the original permittee has assigned its rights under the permits to the new permit Applicant, the new permit Applicant shall pay development impact fees as if it were the original permittee.
5. Administrative charges. The City shall initially assess a \$50 administrative charge to cover administrative expenses. The administrative charge may not be paid with development impact fee credits. The administrative charge shall be in addition to the amount of the development impact fee that is due and shall be paid at the same time as the fee. The administrative charge may be amended to reflect the actual administrative costs by the Development Impact Fee Administrator. Any amendment shall

be adopted as a development standard with the approval of the Mayor and Council.

- B. Exceptions. Development impact fees shall not be owed under any of the following conditions:
1. Development impact fees have been paid for the development and the permit that triggered the collection of the development impact fees has not expired or been voided.
 2. The approval that triggers the collection of development impact fees involves modifications to existing residential or non-residential development that do not:
 - a. add new SUs,
 - b. increase the impact of existing SUs on existing or future capital facilities or,
 - c. change the land-use type of the existing development to a different Category of Development for which a higher development impact fee would have been due.

To the extent that any modification does not meet the requirements of this paragraph, the development impact fee due shall be the difference between the development impact fee that was or would have been due on the existing development and the development impact fee that is due on the development as modified.

3. A governmental entity controls and directs the development for a governmental purpose on property owned by a governmental entity.
- C. Temporary Exemptions from Development Impact Fee Schedules. New developments in the City shall be temporarily exempt from increases in development impact fees that result from the adoption of new or modified development impact fee schedules as follows:
1. Residential Uses (other than multifamily). On or after the day that the first Building Permit is issued for a residential development (other than multifamily), the City shall, at the permittee's request, provide the permittee with an applicable development impact fee schedule, as established by the prior adoption of the fee schedule by the Mayor and Council, that shall be in force for a period of 24 months beginning on the day that the first Building Permit is issued, and which shall expire at the end of the first business day of the 25th month after the first Building Permit is issued. During the effective period of the applicable development impact fee schedule, any Building Permit issued for the same residential

development shall not be subject to any new or modified development impact fee schedule.

2. All Other Uses. On or after the City's approval of a site plan or final subdivision plat for a retail, commercial, high traffic retail, industrial, general office, medical facilities, institutional, recreational, or multifamily development, the City shall provide an applicable development impact fee schedule, as established by the prior adoption of the fee schedule by the Mayor and Council, that shall be in force for a period of 24 months beginning on the day the site plan or final subdivision plat was approved, and which shall expire at the end of the first business day of the 25th month after the site plan or final subdivision plat was approved. During the effective period of the applicable development impact fee schedule, any Building Permit issued for the same development shall not be subject to any new or modified development impact fee schedule.
 3. Changes to Development Plans and Final Subdivision Plats. During the 24-month period referred to in Section 23A-81(C)(1) or (2), if changes are made to a development's site plan or final subdivision plat that will increase the number of service units, the City may assess any new or modified development impact fees against the additional service units. If the City reduces the amount of an applicable development impact fee during the 24-month period referred to in Section 23A-81(C)(1) or (2), the City shall assess the lower development impact fee.
- D. Option to Pursue Special Fee Determination. Where a development is of a type that does not closely fit within a particular Category of Development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing Necessary Public Services to that development will differ substantially from that associated with other developments in a specified Category of Development, the City may require the Applicant to provide the Development Impact Fee Administrator with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development impact fee analysis may propose a unique fee for the development based on the application of an appropriate SU factor to the applicable Plan-Based Cost per SU, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous Category of Development. The Development Impact Fee Administrator shall review the alternative impact fee analysis and shall make a determination as to the

development impact fee to be charged. The decision shall be appealable pursuant to Section 23A-84. The Development Impact Fee Administrator may require the Applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

- E. **Waivers.** Development impact fees shall not be waived except in accordance with the provisions set forth in 23A-81(E)(1) and (2) below. When development impact fees are waived, the City shall transmit non-development impact fee funds to cover the waivers into the appropriate development impact fee account.
 - 1. **Affordable Housing:** Development impact fees will be waived for non-profit affordable housing providers whose residential development is certified by the Director of the Housing and Community Development Department to be affordable to households that earn under one hundred (100) percent of the area median income and that further the goals of the City's Affordable Housing Strategies. The City will transmit funds to cover only that portion of the development impact fee that was waived under this Section.
 - 2. **Development Agreements:** Through a Development Agreement between the City and the developer of a property, partial or full development impact fee waivers may be granted for projects that provide a public benefit to the City and result in a net financial benefit to the City. Development agreements entered into under this section shall comply with the requirements of Section 23A-83.

Section 23A-82 Development Impact Fee Credits and Credit Agreements

- A. **Eligibility of Capital Facility.** All development impact fee Credits must meet the following requirements:
 - 1. One of the following is true:
 - a. The Capital Facility, or the financial contribution toward a Capital Facility that will be provided by the developer and for which a Credit will be issued, must be identified in an adopted Infrastructure Improvements Plan and Fee Report as a Capital Facility for which a development impact fee was assessed; or
 - b. The Applicant must demonstrate to the satisfaction of the City that, given the class and type of improvement, the subject Capital Facility should have been included in the Infrastructure Improvements Plan in lieu of a different Capital Facility that was included in the Infrastructure Improvements Plan and for

which a development impact fee was assessed. If the subject Capital Facility is determined to be eligible for a Credit in this manner, the City shall amend the Infrastructure Improvements Plan to:

- i. include the subject replacement facility, and
- ii. delete the Capital Facility that will be replaced.

2. Credits shall not be available for any infrastructure provided by a developer if the cost of the infrastructure will be repaid to the developer by the City through another agreement or mechanism. To the extent that the developer will be paid or reimbursed by the City for any contribution, payment, construction, or dedication from any City funding source including an agreement to reimburse the developer with future collected development impact fees pursuant to Section 23A-83, any Credits claimed by the developer shall be:

- a. deducted from any amounts to be paid or reimbursed by the City, or
- b. reduced by the amount of the payment or reimbursement.

B. Eligibility of Subject Development. To be eligible for a Credit, the Subject Development must be located within the Service Area of the eligible Capital Facility.

C. Calculation of Credits. Credits will be based on that portion of the costs for an eligible Capital Facility identified in the adopted Infrastructure Improvements Plan for which a development fee was assessed pursuant to the Fee Report. If the Gross Impact Fee for a particular Category of Necessary Public Service is adopted at an amount lower than the Plan-Based Cost per SU, the amount of any Credit shall be reduced in proportion to the difference between the Plan-Based Cost per SU and the Gross Impact Fee adopted. A credit shall not exceed the actual costs the Applicant incurred in providing the eligible Capital Facility.

D. Allocation of Credits. Before Credits can be issued to a Subject Development (or portion of it), Credits must be allocated to that development as follows:

1. The developer and the City must execute a Credit Agreement including all of the following:
 - a. The total amount of the Credits resulting from provision of an eligible Capital Facility.

- b. The estimated number of SUs to be served within the Subject Development.
 - c. The method by which the Credit values will be distributed within the Subject Development.
2. It is the responsibility of the developer to request allocation of development impact fee Credits through an application for a Credit Agreement (which may be part of a Development Agreement entered into pursuant to Section 23A-83).
3. If a Building Permit is issued, and a development impact fee is paid prior to execution of a Credit Agreement for the Subject Development, no Credits may be allocated retroactively to that permit or connection. Credits may be allocated to any remaining permits for the Subject Development in accordance with this Article.
4. If the entity that provides an eligible Capital Facility sells or relinquishes a development (or portion of it) that it owns or controls prior to execution of a Credit Agreement or Development Agreement, Credits resulting from the eligible Capital Facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor(s) in interest for the Subject Development.
5. If multiple entities jointly provide an eligible Capital Facility, both entities must enter into a single Credit Agreement with the City, and any request for the allocation of credit within the Subject Development must be made jointly by the entities that provided the eligible Capital Facility.
6. Credits may only be reallocated from or within a Subject Development with the City's approval of an amendment to an executed Credit Agreement, subject to the following conditions:
 - a. The entity that executed the original agreement with the City, or its legal successor in interest and the entity that currently controls the Subject Development are parties to the request for reallocation.
 - b. The reallocation proposal does not change the value of any Credits already issued for the Subject Development.
7. A Credit Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:

- a. The entity that executed the original agreement with the City or its legal successor in interest, the entity that currently controls the Subject Development, and the entity that controls the non-contiguous parcel are parties to the request for reallocation.
 - b. The reallocation proposal does not change the value of any Credits already issued for the Subject Development.
 - c. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
 - d. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
 - e. The Credit Agreement specifically states the value of the Credits to be allocated to each parcel and/or SU, or establishes a mechanism for future determination of the value of the Credits.
 - f. The Credit Agreement does not involve the transfer of Credits to or from any property subject to a Development Agreement.
8. Public Funding Credits. Credits for public funding sources shall be provided as follows:

Where all or a portion of the construction of a development is directly funded with appropriated public funds duly authorized by a local, state or federal government, a public funding credit shall be deducted from the development impact fee calculated in the fee schedules contained in Section 23A-90, or in the calculation of the fee pursuant to Section 23A-81(D), prior to the assessment and payment of the fee. The public funding credit shall be a percentage of the development impact fee and shall apply equally to all development impact fees. The percentage shall be determined based upon the amount of public monies as a percentage of the total cost of the construction of the development project utilizing public funding. The public funding credit shall not apply to guaranteed loans, tax credits or other indirect government financing.

- E. Credit Agreement. Credits shall only be issued pursuant to a Credit Agreement that conforms to the requirements set forth in Section 23A-82(D). The Development Impact Fee Administrator is authorized by this Article to enter into a Credit Agreement with the controlling entity of a Subject Development, subject to the following:

1. The developer requesting the Credit Agreement shall provide all information requested by the City to allow it to determine the value of the Credit to be applied.
2. An application for a Credit Agreement shall be submitted to the City by the developer within one year of the date on which ownership or control of the Capital Facility passes to the City.
3. The developer shall submit a draft Credit Agreement to the Development Impact Fee Administrator for review in the form provided to the Applicant by the City. The draft Credit Agreement shall include, at a minimum, all of the following information and supporting documentation:
 - a. A legal description and map depicting the location of the Subject Development for which the Credits are being applied. The map shall depict the location of the Capital Facilities that have been or will be provided.
 - b. An estimate of the total SUs that will be developed within the Subject Development depicted on the map and described in the legal description.
 - c. A list of the Capital Facilities associated physical attributes, and the related costs as stated in the Infrastructure Improvements Plan.
 - d. Documentation showing the date of acceptance by the City, if the Capital Facilities have already been provided.
 - e. The total amount of the Credits to be applied within the Subject Development and the calculations leading to the total amount of the Credits.
 - f. The Credits to be applied to each SU within the Subject Development for each Category of Necessary Public Services.
4. The Credit Agreement shall be approved by the Development Impact Fee Administrator prior to its execution. The City's determination of the Credits to be allocated is final.
5. Upon execution of the Credit Agreement by the City and the Applicant, Credits shall be deemed allocated to the Subject Development.
6. Any amendment to a previously approved Credit Agreement must be initiated within two years of the City's final acceptance of the eligible Capital Facility for which the amendment is requested.

7. Any Credit Agreement approved as part of a Development Agreement shall be amended in accordance with the terms of the Development Agreement and Section 23A-83.
- F. Issuance of Credits. Credits allocated pursuant to Section 23A-82(D) may be issued and applied toward the Gross Impact Fees due from a development, subject to the following conditions:
1. Credits issued for an eligible Capital Facility may only be applied to the development impact fee due for the applicable Category of Necessary Public Services, and may not be applied to any fee due for another Category of Necessary Public Services.
 2. Credits shall only be issued when the eligible Capital Facility from which the Credits were derived has been accepted by the City or when adequate security for the completion of the eligible Capital Facility has been provided in accordance with all terms of an executed Development Agreement.
 3. Where Credits have been issued pursuant to Section 23A-82(F)(2), an impact fee due at the time a Building Permit is issued shall be reduced by the Credits stated in or calculated from the executed Credit Agreement. Where Credits have not yet been issued, the Gross Impact Fee shall be paid in full, and a refund of the Credits shall be due when the developer demonstrates compliance with Section 23A-82(F)(2) in a written request to the City.
 4. Credits, once issued, may not be rescinded or reallocated to another permit or parcel, except that Credits may be released for reuse on the same Subject Development if a Building Permit for which the credits were issued has expired or been voided and is otherwise eligible for a refund under Section 23A-85(A)(2)(a).
 5. Notwithstanding the other provisions of this Section, Credits issued prior to January 1, 2012, may only be used for the Subject Development for which they were issued. The Credits may be transferred to a new owner of all or part of the Subject Development in proportion to the percentage of ownership in the Subject Development to be held by the new owner.

Section 23A-83 Development Agreements

- A. General. Development Agreements containing provisions regarding development impact fees, development impact fee Credits, and/or disbursement of revenues from development impact fee accounts shall comply with the requirements of this Section.

- B. Development Agreement Required. A Development Agreement is required to authorize any of the following:
1. To issue Credits prior to the City's acceptance of an eligible Capital Facility.
 2. To allocate credits to a parcel that is not contiguous with the Subject Development and that does not meet the requirements of Section 23A-82(D)(7).
 3. To reimburse the developer of an eligible Capital Facility using funds from development impact fee accounts.
 4. To allocate different Credit amounts per SU to different parcels within a Subject Development.
 5. For a single family residential Dwelling Unit, to allow development impact fees to be paid at a later time than the issuance of a Building Permit as provided in Section 23A-83(H).
- C. General Requirements. All Development Agreements shall be prepared and executed in accordance with A.R.S. Section 9-500.05 and any applicable requirements of the City Code. Except where specifically modified by this Section, all provisions of Section 23A-82 shall apply to any Credit Agreement that is authorized as part of a Development Agreement.
- D. Early Issuance of Credits. A Development Agreement may authorize the issuance of Credits prior to acceptance of an eligible Capital Facility by the City when the Development Agreement specifically states the form and value of the security (i.e. bond, letter of Credit, etc.) to be provided to the City prior to issuance of any Credits. The City shall determine the acceptable form and value of the security to be provided.
- E. Non-contiguous Allocation of Credits. A Development Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:
1. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.
 2. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.
 3. The Development Agreement specifically states the value of the Credits to be allocated to each parcel and/or SU, or establishes a mechanism for future determination of the Credits.

- F. Uneven Allocation of Credits. The Development Agreement must specify how Credits will be allocated amongst different parcels on a per-SU basis, if the Credits are not to be allocated evenly. If the Development Agreement is silent on this topic, all Credits will be allocated evenly amongst all parcels on a per-SU basis.
- G. Use of Reimbursements. Funds reimbursed to developers from impact fee accounts for construction of an eligible Capital Facility must be utilized in accordance with applicable law for the use of City funds in construction or acquisition of Capital Facilities, including A.R.S. Section 34-201, et seq.
- H. Deferral of Fees. A Development Agreement may provide for the deferral of payment of development impact fees for a residential development beyond the issuance of a Building Permit; provided that a development impact fee may not be paid later than 15 days after the issuance of the certificate of occupancy for that Dwelling Unit. The Development Agreement shall provide for the value of any deferred development impact fees to be supported by appropriate security, including a surety bond, letter of Credit, or cash bond.
- I. Waiver of Fees. If the City agrees to waive any development impact fees assessed on development in a Development Agreement, the City shall reimburse the appropriate development impact fee account for the amount that was waived.
- J. No Obligation. Nothing in this Section obligates the City to enter into any Development Agreement or to authorize any type of Credit Agreement permitted by this Section.

Section 23A-84 Appeals

- A. Mayor and Council Appeal. A development impact fee or credit determination by the Development Impact Fee Administrator may be appealed in accordance with the Mayor and Council appeal procedure set forth in the Unified Development Code (UDC), Chapter 23B, Section 3.9.2, and in conformance with the procedures set forth in this Section.
- B. Limited Scope. An appeal shall be limited to disputes regarding the calculation of the development impact fees or credits for a specific development and/or permit and calculation of SU's for the development.
- C. Form of Appeal. Appeals shall be filed in writing with the City Clerk's Office with a copy to the Development Impact Fee Administrator, within fourteen (14) days of a decision and no later than fourteen (14) days after the determination of the final

development impact fee to be charged or credit to be issued for a project.

- D. Final decision. The Mayor and Council's decision regarding the appeal is final.
- E. Fees during pendency. Notwithstanding UDC, Chapter 23B, Section 3.9.2.B, building permits may be issued during the pendency of an appeal if the Applicant pays the full development impact fee at the time the appeal is filed.

Upon final disposition of an appeal, the development impact fee shall be adjusted in accordance with the decision rendered and a refund shall be made, if applicable

- F. Takings Appeal. Any assertion that the assessment of the development impact fee on an individual development constitutes an unconstitutional taking may be appealed in accordance with the takings appeal procedure pursuant to UDC, Chapter 23B, Section 3.9.3. Building permits may be issued during the pendency of a takings appeal as set forth under Section 23A-84(E) above.
- G. Interpretations. Any dispute or challenge to the interpretation of this Article shall be determined by the Development Impact Fee Administrator.

Section 23A-85 Refunds of Development Impact Fees

- A. Refunds. A refund (or partial refund) will be paid to any current owner of property within the City who submits a written request to the Development Impact Fee Administrator and demonstrates that:
 - 1. The permit that triggered the collection of the development impact fee has expired or been voided prior to the commencement of the development for which the permit was issued and the development impact fees collected have not been expended, encumbered, or pledged for the repayment of Financing or Debt; or
 - 2. The owner of the subject real property or its predecessor in interest paid a development impact fee for the applicable Capital Facility on or after August 1, 2014, and one of the following conditions exists:
 - a. The Capital Facility designed to serve the subject real property has been constructed, has the capacity to serve the subject real property and any development for which there is reserved capacity, and the service which was to be provided by that Capital Facility has not been provided to the subject

real property from that Capital Facility or from any other infrastructure.

- b. After collecting the fee to construct a Capital Facility the City fails to complete construction of the Capital Facility within the time period identified in the Infrastructure Improvements Plan, as it may be amended, and the corresponding service is otherwise unavailable to the subject real property from that Capital Facility or any other infrastructure.
- c. For a Category of Necessary Public Services, any part of a development impact fee is not spent within ten years of the City's receipt of the development impact fee.
- d. The development impact fee was calculated and collected for the construction cost to provide all or a portion of a specific Capital Facility serving the subject real property and the actual construction costs for the Capital Facility are less than the construction costs projected in the Infrastructure Improvements Plan by a factor of 10% or more. In such event, the current owner of the subject real property shall, upon request as set forth in this Section, be entitled to a refund for the difference between the amounts of the development impact fee charged for and attributable to such construction cost and the amount the development impact fee would have been calculated to be if the actual construction cost had been included in the Fee Report. The refund contemplated by this subsection shall relate only to the costs specific to the construction of the applicable Capital Facility and shall not include any related design, administrative, or other costs not directly incurred for construction of the Capital Facility that are included in the development impact fee as permitted by A.R.S. Section 9-463.05.

- B. Earned Interest. A refund of a development impact fee shall include any interest actually earned on the refunded portion of the development impact fee by the City from the date of collection to the date of refund. All refunds shall be made to the record owner of the property at the time the refund is paid.
- C. Refund to Government. If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.

Section 23A-86 Oversight of Development Impact Fee Program

- A. Annual Report. Within 90 days of the end of each fiscal year, the City shall file with the City Clerk an unaudited annual report accounting

for the collection and use of the fees for each Service Area and shall post the report on its website in accordance with A.R.S. Section 9-463.05 (N) and (O).

- B. Biennial Audit. In addition to the annual report described in Section 23A-86(A), the City shall provide for a biennial, certified audit of the City's Land Use Assumptions, Infrastructure Improvements Plan and development impact fees.
1. An audit pursuant to this Subsection shall be conducted by one or more Qualified Professionals who are not employees or officials of the City and who did not prepare the Infrastructure Improvements Plan.
 2. The audit shall review the collection and expenditures of development fees for each project in the plan and provide written comments describing the amount of development impact fees assessed, collected, and spent on Capital Facilities.
 3. The audit shall describe the Level of Service in each Service Area, and evaluate any inequities in implementing the Infrastructure Improvements Plan or imposing the development impact fee.
 4. The City shall post the findings of the audit on the City's website and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.
 5. For purposes of this Section a certified audit shall mean any audit authenticated by one or more of the Qualified Professionals conducting the audit pursuant to Section 23A-86(B)(1).

DIVISION 3.

GENERAL PROVISIONS

SECTION 23A-87 Miscellaneous Provisions

- A. Other Development Requirements. Nothing in this Article shall restrict the City from requiring the construction of reasonable project improvements required to serve the development project, whether or not such improvements are of a type for which credits are available under Section 23A-82 above.
- B. Record Keeping. The Development Impact Fee Administrator shall maintain accurate records of the development impact fees paid and any other matters that the City deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with

reasonable advance notice. Records pertaining to individual developments shall be maintained for a minimum of ten (10) years from the date the development impact fee is paid or credits are issued, or for three (3) years after the completion of the development, whichever is later

- C. Amendment Of Development Impact Fee Assessments. A development impact fee may be amended after it has been assessed and paid where there is an error or mistake in the calculation of the fee or applicable credits, or where the actual cost of credits changes after the calculation of credits. Any amounts overpaid by an Applicant shall be refunded by the Development Impact Fee Administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount. Any amounts underpaid by the applicant shall be paid to the Development Impact Fee Administrator within thirty (30) days after the acceptance of the recalculated amount. In the case of an underpayment to the Development Impact Fee Administrator, the City may not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty-day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee.

SECTION 23A-88 Severability

If a provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

SECTION 23A-89 Violation

Furnishing false information on any matter relating to the administration of this article, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this article.

DIVISION 4.

DEVELOPMENT IMPACT FEE SCHEDULES AND EFFECTIVE DATES

SECTION 23A-90 Effective Dates

For the period from December 23, 2014 through and including June 30, 2016, development impact fees shall be assessed and paid at the “phase-in fee” rates represented in Table 1 of Section 23A-91.

Commencing July 1, 2016, development impact fees shall be fully assessed and paid thereafter at the “full adopted fee” rates represented in Table 2 of Section 23A-91. Nothing in this Section or any other provision of this Article shall prohibit the Mayor and Council from moving the implementation date of the “full adopted fee” rates to an earlier or later effective date. Any such amendment to the implementation date shall not be deemed to be an increase to the development impact fees as provided in this Article, as Mayor and Council expressly adopt and approve the “full fee” rates represented in Table 2 of Section 23A-91.

Notwithstanding the provisions of this Section, the collection and payment of development impact fees shall comply with all other provisions of this Article.

SECTION 23A-91 Fee Schedule Tables

CITY OF TUCSON – Development Impact Fee Schedules

Note 1: For the residential land use categories (single-family residential, condo/townhomes, multi-family residential/apartments), fees shown are per residential unit. For the non-residential land use categories (retail, office, industrial), fees shown are per 1000 square feet of building area.

Note 2: The tables do not include an administrative fee.

TABLE 1 – “PHASE-IN FEE” RATES*

*Assessed Beginning December 23, 2014 Through and Including June 30, 2016 Unless the Phase-In Period is Changed by the Mayor and Council Pursuant to Section 23A-90.

“PHASE-IN FEE” TABLES

RESIDENTIAL LAND USES*

*Fees are per residential unit

SINGLE-FAMILY RESIDENTIAL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$4,838 | \$4,838 | \$4,838 | \$4,838 | \$4,838 |
| PARKS | \$1,935 | \$1,935 | \$1,826 | \$1,935 | \$218 |
| POLICE | \$379 | \$379 | \$379 | \$379 | \$379 |
| FIRE | \$303 | \$303 | \$303 | \$303 | \$303 |
| TOTAL | \$7,455 | \$7,455 | \$7,346 | \$7,455 | \$5,738 |

CONDO/TOWNHOMES

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$3,978 | \$3,978 | \$3,978 | \$3,978 | \$3,978 |
| PARKS | \$1,591 | \$1,591 | \$1,239 | \$1,591 | \$148 |
| POLICE | \$257 | \$257 | \$257 | \$257 | \$257 |
| FIRE | \$206 | \$206 | \$206 | \$206 | \$206 |
| TOTAL | \$6,032 | \$6,032 | \$5,680 | \$6,032 | \$4,589 |

MULTI-FAMILY/APARTMENTS

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$2,580 | \$2,580 | \$2,580 | \$2,580 | \$2,580 |
| PARKS | \$1,032 | \$1,032 | \$1,032 | \$1,032 | \$132 |
| POLICE | \$230 | \$230 | \$230 | \$230 | \$230 |
| FIRE | \$183 | \$183 | \$183 | \$183 | \$183 |
| TOTAL | \$4,025 | \$4,025 | \$4,025 | \$4,025 | \$3,125 |

NON-RESIDENTIAL LAND USES**

** Fees are per 1000 square feet of building area

RETAIL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$4,282 | \$4,282 | \$4,282 | \$4,282 | \$4,282 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$4,798 | \$4,811 | \$4,783 | \$4,796 | \$4,763 |

OFFICE

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$3,797 | \$3,797 | \$3,797 | \$3,797 | \$3,797 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$4,313 | \$4,326 | \$4,298 | \$4,311 | \$4,278 |

INDUSTRIAL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$806 | \$806 | \$806 | \$806 | \$806 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$1,322 | \$1,335 | \$1,307 | \$1,320 | \$1,287 |

TABLE 2 – “FULL ADOPTED FEE” RATES*

*Assessed Commencing July 1, 2016 and Thereafter Unless the Phase-In Period is Changed by the Mayor and Council Pursuant to Section 23A-90.

“FULL ADOPTED FEE” TABLES

RESIDENTIAL LAND USES*

*Fees are per residential unit

SINGLE-FAMILY RESIDENTIAL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|-----------------|----------------|------------------|-------------------|
| STREETS | \$5,691 | \$5,691 | \$5,691 | \$5,691 | \$5,691 |
| PARKS | \$2,945 | \$3,953 | \$1,826 | \$2,775 | \$218 |
| POLICE | \$379 | \$379 | \$379 | \$379 | \$379 |
| FIRE | \$303 | \$303 | \$303 | \$303 | \$303 |
| TOTAL | \$9,318 | \$10,326 | \$8,199 | \$9,148 | \$6,591 |

CONDOS/TOWNHOMES

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$4,059 | \$4,059 | \$4,059 | \$4,059 | \$4,059 |
| PARKS | \$1,998 | \$2,683 | \$1,239 | \$1,883 | \$148 |
| POLICE | \$257 | \$257 | \$257 | \$257 | \$257 |
| FIRE | \$206 | \$206 | \$206 | \$206 | \$206 |
| TOTAL | \$6,520 | \$7,205 | \$5,761 | \$6,405 | \$4,670 |

MULTI-FAMILY/APARTMENTS

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$3,457 | \$3,457 | \$3,457 | \$3,457 | \$3,457 |
| PARKS | \$1,788 | \$2,400 | \$1,108 | \$1,685 | \$132 |
| POLICE | \$230 | \$230 | \$230 | \$230 | \$230 |
| FIRE | \$183 | \$183 | \$183 | \$183 | \$183 |
| TOTAL | \$5,658 | \$6,270 | \$4,978 | \$5,555 | \$4,002 |

NON-RESIDENTIAL LAND USES**

** Fees are per 1000 square feet of building area

RETAIL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$6,507 | \$6,507 | \$6,507 | \$6,507 | \$6,507 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$7,023 | \$7,036 | \$7,008 | \$7,021 | \$6,988 |

OFFICE

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$3,797 | \$3,797 | \$3,797 | \$3,797 | \$3,797 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$4,313 | \$4,326 | \$4,298 | \$4,311 | \$4,278 |

INDUSTRIAL

| | <i>Central</i> | <i>West</i> | <i>East</i> | <i>Southeast</i> | <i>Southlands</i> |
|--------------|----------------|----------------|----------------|------------------|-------------------|
| STREETS | \$806 | \$806 | \$806 | \$806 | \$806 |
| PARKS | \$38 | \$51 | \$23 | \$36 | \$3 |
| POLICE | \$321 | \$321 | \$321 | \$321 | \$321 |
| FIRE | \$157 | \$157 | \$157 | \$157 | \$157 |
| TOTAL | \$1,322 | \$1,335 | \$1,307 | \$1,320 | \$1,287 |

SECTION 2. Article III, Impact Fees, of Tucson Code Chapter 23A as adopted on September 27, 2004 is repealed effective July 31, 2014 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any

prior provision of Article III, Chapter 23A based upon acts occurring prior to the repeal of any such provision.

SECTION 3. Division 2, "Listing of Words and Terms," of Article IV, Definitions, of Tucson Code Chapter 23A, Development Compliance Code, is repealed effective December 23, 2014 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of Division 2, Article IV, Chapter 23A based upon acts occurring prior to the repeal of any such provision.

SECTION 4. If any provisions of this Ordinance or the application thereof to any person or circumstance are invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or circumstance, and to this end the provisions of this Ordinance are severable.

SECTION 5. The Mayor and Council hereby adopt the Fee Reports and development impact fee schedules contained in the Fee Reports, for Street Facilities, Parks and Recreational Facilities, Police Facilities and Fire Facilities, as set forth in the reports drafted by Curtis Lueck and Associates, dated October 9, 2014, and included as Attachments 2, 3, 4 and 5 to the Communication. The development impact fee schedules hereby adopted are incorporated by reference, and appear in this Ordinance at Section 23A-91.

SECTION 6. The development impact fee schedules adopted by the Mayor and Council on this date, October 9, 2014, shall be effective seventy-five (75) days after this Ordinance is adopted by the Mayor and Council.

SECTION 7. The Mayor and Council may review the development impact fee project list each year as part of the budget/CIP process, or at any other time, to ensure that expenditures are continuing to benefit new development; and may adjust the effective date of the "full adopted" development impact fees to an earlier or later date, based on its review of and/or modification to the development impact fee project list.

SECTION 8. This Ordinance becomes effective seventy-five (75) days after it is adopted by the Mayor and Council and is available from the City Clerk.

SECTION 9. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, October 9, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

PG/tl
8/1/14 