



## BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: August 17, 2020

Title: Roadway Development Impact Fee – Final Fee Study, Phase-in Schedule, Ordinance

### Introduction/Background:

The County Roadway Development Impact Fee ordinance must be updated due to changes in A.R.S. § 11-1102. On July 7, 2020, the Board of Supervisors (BOS) held a public hearing on the draft Fee Study and on February 18, 2020, the BOS approved the required Land Use Assumptions Report and Infrastructure Improvements Plan. The final step in the process is approval of the Final Fee Study, Phase-in Schedule, and adoption of the new Impact Fee Ordinance.

### Discussion:

Following the required 30-day waiting period, the Final Fee Study is presented for BOS consideration, along with the Phase-in Fee Schedule and new Roadway Development Impact Fee Ordinance. The new ordinance replaces the existing ordinance in its entirety and incorporates the required changes per statute. Changes include the requirement to develop land use assumptions, an infrastructure improvements plan, and a fee study, each of which must be approved separately before new fees can be adopted; fees and studies must be updated at least every 5 years; fees must be spent within 10 years; refunds are authorized under certain circumstances; assessed fees may not be increased for 24 months for phased projects; and a biennial audit is now required. If adopted, the fees would become effective January 1, 2021 at which time most fees would be reduced for 6 months due to economic uncertainty regarding the COVID-19 pandemic.

### Conclusion:

The Final Fee Study, Phase-in schedule, and ordinance are presented for Board action.

### Recommendation:

Staff recommends approval of the Fee Study, Phase-In schedule, and new Impact Fee Ordinance.

### Fiscal Impact:

Approval will allow impact fees to continue to be collected for the next 10 years, estimated to be \$90.8 million, to help fund roadway capital needs.

### Board of Supervisor District:

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## **ORDINANCE 2020-**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO CAPITAL IMPROVEMENTS FUNDING AND DEVELOPMENT IMPACT FEES; REPEALING AND REPLACING TITLE 19 OF THE PIMA COUNTY CODE IN ITS ENTIRETY; ADOPTING A NEW IMPACT FEE ORDINANCE. (*All Districts*)**

### **THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA FINDS THAT:**

1. On February 27, 1996, the Pima County Board of Supervisors approved and adopted the Pima County Roadway Impact Fee Ordinance Number 1996-09, and codified as Title 19 of the Pima County Code, which established a roadway development impact fee. The ordinance was subsequently amended by ordinances 1996-73, 1997-23, 2003-40, 2006-25, 2009-02, 2009-94, 2009-95, 2014-24, and resolutions 2013-76 and 2014-48.
2. Arizona Revised Statutes § 11-1102 requires Pima County to update and revise the development impact fee ordinance prior to January 1, 2021 in order to continue collecting impact fees.
3. On February 18, 2020 the Board of Supervisors approved the required Land Use Assumptions report and Infrastructure Improvements Plan and on July 7, 2020 the Board of Supervisors held a public hearing on the draft Fee Study.

### **BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA,**

**Section 1.** The Pima County Code is amended by repealing Title 19 in its entirety, except that the former development fee schedule will remain on file with Pima County and remains in effect to the extent necessary to implement Section 19.03.010 of new Title 19, Adjustments to Fees. Former Title 19 is replaced with a new Title 19, to read as follows:

## **Title 19**

### **ROADWAY DEVELOPMENT IMPACT FEE**

#### **Chapter 19.01 – GENERAL PROVISIONS**

##### **Sections:**

- 19.01.010 Title.
- 19.01.020 Legislative Intent and Purpose.
- 19.01.030 Definitions.
- 19.01.040 Applicability.
- 19.01.050 Authority.
- 19.01.060 Administration.

#### **Chapter 19.02 – PROCEDURES FOR ADOPTION AND UPDATES**

##### **Sections:**

- 19.02.010 Ordinance.
- 19.02.020 Infrastructure Improvements Plan.
- 19.02.030 Adoption or Amendment Procedures.
- 19.02.040 Updating Procedures.

#### **Chapter 19.03 – ADMINISTRATIVE PROVISIONS**

##### **Sections:**

- 19.03.010 Adjustments to Fees.
- 19.03.020 Fee Credits and Credit Agreements.
- 19.03.030 Development Agreements.
- 19.03.040 Fee Waivers.
- 19.03.050 Appeals.
- 19.03.060 Refunds.
- 19.03.070 Oversight and Reporting.
- 19.03.080 Intergovernmental Agreements.

## **Chapter 19.01 – GENERAL PROVISIONS**

### **Sections:**

- 19.01.010 Title.
- 19.01.020 Legislative Intent and Purpose.
- 19.01.030 Definitions.
- 19.01.040 Applicability.
- 19.01.050 Authority.
- 19.01.060 Administration.

### **19.01.010 Title.**

This chapter shall be known as the "Pima County Roadway Development Impact Fee Ordinance".

### **19.01.020 Legislative Intent and Purpose.**

A. This chapter is adopted for the purpose of promoting the health, safety and general welfare of the residents of Pima County by:

1. Requiring new development to pay its proportionate share of the costs incurred by Pima County 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. § 11-1102, including requirements that on or before January 1, 2021, the County replace its development impact fee program with one pursuant to the requirements of A.R.S. § 11-1102.
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 should be administered in accordance with the provisions of this chapter.

B. This chapter shall not affect the County's zoning authority or its authority to adopt or amend its general plan, provided that planning and zoning activities may require amendments to the development impact fees provided in Chapter 19.02.

### **19.01.030 Definitions.**

When used in this chapter, the terms below shall have the following meanings unless the context indicates otherwise. Singular terms shall include their plural. Other terms used in this chapter shall have the definitions set forth in Title 18 (Zoning) of the Pima County Code.

1. *Assisted living/congregate care*: A residential land use that includes any complex that provides centralized amenities (i.e. meals, assistance, care) and/or some level of medical services or medical care for any number of residents on a continuing basis. This includes nursing homes, group homes, and other similar uses. See ITE land use category 253.
2. *Attached residential/multi-family*: A residential land use that includes any apartment or townhome development, regardless of unit or building size. See ITE land use category 220.
3. *Building permit*: The permit required for construction as determined pursuant to Title 15 (Buildings and Construction) of the Pima County Code. For the purposes of this chapter, the term "building permit" shall not include a permit required for reconstruction of a structure if the reconstruction does not reflect a change in the number of EDUs applicable to the development. If the reconstruction increases the number of EDUs applicable to the development, the development fee for roadways shall be based upon the amount of the increase. For purposes of this chapter, the term "building permit" shall include the permit or approval required from Pima County for the placement and occupancy of a manufactured home as defined in Section 18.03.020(M)(1) of the Pima County Code, multi-sectional manufactured home as defined in Section 18.03.020(M)(2) of the Pima County Code or factory-built building (modular) as defined in Section 18.03.020(F)(1) of the Pima County Code.
4. *Capital facility*: An asset having a useful life of three or more years that is a component of the necessary public services provided by the County. A capital facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of facilities, improvements to existing facilities, and associated financing and professional services. Whenever used herein, "infrastructure" shall have the same meaning as "capital facilities."
5. *Charter/private school*: A land use that is an institution of learning offering education for children, including some or all of the grades from kindergarten through twelfth grade. See ITE land use categories 534, 536, and 537.
6. *County*: Pima County, Arizona.
7. *Credit*: A reduction in an assessed impact fee resulting from developer contributions to, payments for, construction of, or dedications for capital facilities included in an infrastructure improvements plan (or as otherwise permitted by this chapter).
8. *Credit Agreement*: A written agreement between the County and a developer or land owner that allocates credits to the development per section 19.03.020 of this chapter. A credit agreement may be included as part of a development agreement as detailed in section 19.03.030 of this chapter.
9. *Development agreement*: An agreement prepared in accordance with A.R.S. § 11-1101 and section 19.03.030 of this chapter, which may include provisions regarding impact fee credits for a development and/or reimbursements to a developer for providing capital facilities included in the infrastructure implementation plan.
10. *Development*: As defined in A.R.S. § 11-1102(V)(2), the subdivision of land; the construction, reconstruction, conversion, structural alteration, relocation or

enlargement of any structure that adds or increases the number of service units; any use or extension of the use of land that increases the number of service units.

11. *Dwelling unit*: A house, apartment, mobile home or trailer, group of rooms, or single room occupied as a separate living quarters or, if vacant, intended for occupancy as separate living quarters.
12. *Equivalent demand unit (EDU)*: A standardized measure of demand that a particular land use type places on each category of necessary public service, in relation to the demand placed on the same necessary public service by a detached single-family dwelling unit. The EDU is calculated by using data specific to the service area in which the facility will be located and pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.
13. *Fee study*: A written report that identified the methodology for calculating the among of each development impact fee, explains the relationship between the development impact fee and the plan-based cost per EDU, and which meets other requirements set forth in A.R.S. § 11-1102.
14. *General office*: A land use category that includes all offices except medical-dental-veterinary offices. See ITE land use category 710.
15. *High-traffic retail/services*: A land use category that includes any development which attracts higher traffic volumes than other general retail and service developments, including but not limited to fast food restaurants, coffee shops, gas stations, convenience stores, combination gas station/convenience stores, and other similar high traffic generators. See ITE land use categories 853, 930, and 934.
16. *Hospital/clinic*: A land use category that includes any hospital or clinic, including veterinary hospitals and clinics, for the diagnosis, care, observation, and/or treatment of two or more unrelated persons (or animals) suffering from illness, injury, or deformity or for other professional care. Clinics often have lab facilities, pharmacies, and a wider range of services than a typical medical office. The term "hospital" and "clinic" shall not be construed to include the office of a physician or practitioner. See ITE land use categories 610 and 620.
17. *Hotel/motel*: A land use category that includes temporary lodging facilities such as hotels, motels, and recreational vehicle parks. See ITE land use categories 310 and 320.
18. *Industrial*: A land use category that includes any light, medium, or heavy industrial use as well as manufacturing uses, warehouses, and self-storage facilities (i.e. mini-warehouses). See ITE land use categories 110, 130, 140, 150, and 151.
19. *Infrastructure improvements plan (IIP)*: A document or series of documents that meet the requirements set forth in A.R.S. § 11-1102(F), and that is adopted pursuant to Section 19.08 herein.
20. *ITE land use categories*: Land use categories found in the Institute of Transportation Engineers' *Trip Generation Manual* (10<sup>th</sup> Edition, 2017).
21. *Land Use assumptions (LUA)*: Projections of changes in land use, densities, intensities, and population for a service area over a period of at least ten years, upon which an IIP is based.

22. *Level of service*: A quantitative and/or qualitative measure of a necessary public service that is defined in terms of the relationship between service capacity and service demand, accessibility, 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 or different subcategories within one public service category as identified in the IIP.
23. *Medical/dental/vet office*: A land use category that includes any medical, dental, or veterinarian office. See ITE land use category 720.
24. *Mobile home park*: A land use category that includes any mobile home for which a building permit is required, either within a mobile home park or as a stand-alone. See ITE land use category 240.
25. *Necessary public service*: As defined in A.R.S. § 11-1102(V)(7)(c), any street facilities located in the service area that have a life expectancy of three or more years and that are owned and operated by or on behalf of the County. Street facilities include arterial or collector streets or roads that have been designated on an officially adopted plan of the County, traffic signals and rights-of-way and improvements thereon.
26. *Public school*: A public or institutional land use that is an institution of learning offering education for all children, including some or all of the grades from kindergarten through twelfth grade. See ITE land use categories 520 and 530.
27. *Qualified professional*: As defined in A.R.S. § 11-1102(V)(8), a professional engineer, surveyor, financial analyst, or planner providing services within the scope of the person's license, education, or experience.
28. *Recreational*: A land use category that includes athletic clubs, health or fitness clubs, racquet or tennis clubs, and other similar uses. See ITE land use category 492 and related categories.
29. *Retail*: A land use category that consists of shopping facilities including, but not limited to, big box stores, grocery stores, home improvement stores or superstores, factory outlets, discount clubs or superstores, nurseries, automobile sales, and other general commercial or retail facilities. See ITE land use categories 820 and 823.
30. *Senior housing*: A residential land use category which is age-restricted, including single family detached homes and attached or multi-family units. See ITE land use category 251.
31. *Service area*: As defined in A.R.S. § 11-1102 (V)(9), any specified area within the boundaries of a county in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the IIP.
32. *Service unit* (see EDU): As defined in A.R.S. § 11-1102 (V)(10), a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated using data specific to the service area in which the facility will be located and pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

33. *Services*: A land use category that includes any development that provides a service, including but not limited to restaurants, auto-repair centers, car washes, day cares, and other similar facilities. See ITE land use categories 932 and 942.s
34. *Single family detached residential*: A residential land use category that includes any single family detached home or housing development that is not age-restricted. Mobile homes are not included. See ITE land use category 210.
35. *Substantial nexus*: A substantial nexus exists where the demand for necessary public services that will be generated by an EDU can be reasonably quantified in terms of the burden it will impose on an existing facility, the need it will create for new or expanded facilities, or the benefit to the development from those facilities.

#### **19.01.040 Applicability.**

This chapter applies to all new development within any impact fee service area for Pima County as defined in the adopted IIP.

#### **19.01.050 Authority.**

- A. The County may assess and collect a development impact fee for costs associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this chapter, including the relevant portion of the Infrastructure Improvements Plan (IIP). Development impact fees shall be subject to the following requirements:
  1. The County shall develop and adopt a fee report that evaluates and defines the development impact fees to be charged in each service area based on the IIP and the plan-based cost per EDU calculated pursuant to Section 19.02.020.
  2. Development impact fees shall be assessed for all new residential or non-residential development including but not limited to retail, office, industrial, and school developments. The County may assess different fees for 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 EDU for any category of development.
  3. No development impact fees shall be charged, or credits issued, for any facility that does not fall within one of the categories of necessary public services for which development impact fees may be assessed as identified in Section 19.02.020.
  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 current safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing facilities that are serving existing development.

5. Development impact fees may not be used to pay the County's administrative, maintenance, or other operating costs. A separate fee per Section 19.01.060(E) will be charged for these purposes.
  6. Projected interest charges and other finance costs may be included in determining the amount of the development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes, or other obligations issued to finance construction of necessary public services or facility expansions identified in the IIP.
  7. Except for any fees included on interim fee schedules, all development impact fees charged by the County must be included in a fee schedule prepared pursuant to this chapter and included in the fee study.
  8. All development impact fees shall meet the requirements of A.R.S. § 11-1102.
- B. The fee study shall summarize the costs of facilities necessary to serve new development on a per EDU basis as defined and calculated in the IIP, including all required offsets, and shall recommend a development impact fee structure for adoption by the County. The actual impact fees to be assessed shall be disclosed and adopted in the form of impact fee schedules.

#### **19.01.060 Administration.**

- A. The county administrator or persons or departments designated by the county administrator shall administer the development impact fee program.
- B. Impact fees shall be accounted for in separated funds that clearly identify the service area in which the fee was assessed.
- C. Impact fees and any earned interest shall be spent to provide necessary roadway improvements in the same service area for which they were collected, including costs to finance those facilities and other costs authorized by this chapter and included in an approved IIP.
- D. Impact fees collected after December 31, 2020 shall be spent as authorized by this chapter within ten years of the date in which they were collected.

- E. A non-refundable \$75 administrative charge is due when impact fees are paid. The administrative charge is not an impact fee, and cannot be reduced by any credits.
- F. Impact fees shall be assessed and paid either (1) when the building permit is issued or (2) at a later time if specified in a development agreement previously approved by the Board of Supervisors, as outlined in Section 19.03.030.
- G. Any action to collect impact fees shall be commenced within 2 years after the obligation to pay the fees accrues.

## **Chapter 19.02 – PROCEDURES FOR ADOPTION AND UPDATES**

### **Sections:**

- 19.02.010 Ordinance.
- 19.02.020 Infrastructure Improvements Plan.
- 19.02.030 Adoption or Amendment Procedures.
- 19.02.040 Updating Procedures.

### **19.02.010 Ordinance.**

- A. This chapter shall provide the framework for adoption and implementation of the impact fee program, as well as provide the adopted fee schedules for the assessment of impact fees.
- B. Prior to assessment of a new or modified impact fee, the County shall prepare land use assumptions (LUA) for all service areas within which impact fees will be charged, an infrastructure improvements plan (IIP) and fee study.

### **19.02.020 Infrastructure Improvements Plan.**

- A. The County shall prepare an infrastructure improvements plan (IIP) that establishes the needed roadway capital improvements and is based on the LUA. The IIP shall:
  - 1. Define and provide a map of all service areas within which the County will provide the necessary public services for which development impact fees will be charged. Each service area shall be defined in a manner that demonstrates a substantial nexus between the roadway facilities to be provided in the service area and the development to be served by those facilities.
  - 2. Identify and describe the LUA upon which the IIP is based for each service area.
  - 3. Analyze and identify the existing roadway level of service provided by the County to existing development.

4. Identify the roadway level of service to be provided by the County based on the relevant LUA and any established County roadway standards or policies related to required levels of service.
5. Identify the existing capacity of the roadway facilities in each service area, the utilization of those facilities by existing development, and the available excess capacity of those facilities to serve new development including any existing or planned commitments or agreements for the usage of said capacity.
6. Estimate the total number of future EDUs within each service area based on the County's LUA and projected new development in each service area.
7. Provide a summary table describing the level of service by relating the required roadway facilities to EDUs in each service area and identifying the applicable EDU factor associated with each category of development.
8. Analyze and identify the projected utilization of any available excess capacity on the existing roadway facilities and all new or expanded facilities that will be required to provide and maintain the planned level of service in each service area as a result of the new projected EDUs in that service area for a period not to exceed ten years.
9. Estimate the total cost of any available excess capacity and/or new or expanded capital facilities that will be required to serve new EDUs, including cost of land acquisition, improvements, engineering and architectural services, studies leading to design, design, construction, financing, and administrative costs. Total costs should not include costs for on-going operation and maintenance of facilities, nor for the replacement of facilities to the extent that replacement is needed to serve existing development.
10. Forecast the revenues from taxes, fees, assessments, or other sources that will be available to fund the new or expanded facilities identified in the IIP, which shall include estimated state-shared revenue, highway user revenue, federal revenue, and property taxes.
11. Calculate required offsets as follows:
  - a. From the forecasted revenues, identify those sources of revenue that are attributable to new development and will contribute to paying for the capital costs of necessary public services.
  - b. For each source and amount of revenue identified, calculate the relative contribution of each category of development to paying for the capital costs of necessary public services in each service area.

- c. Based on the relative contributions, calculate the total offset to be provided to each category of development in each service area.
  - d. Convert the total offset to be provided to each category of development in each service area into an offset amount per EDU by dividing the total offset for each category of development by the number of EDUs associated with that category of development.
- 12. Calculate the plan-based cost per EDU by determining the cost per EDU to provide the necessary public services for the overall County.
- B. The County may reserve capacity in an IIP to serve one or more planned future developments, including capacity reserved through a development agreement. All reservations of existing capacity must be disclosed in the IIP at the time it is adopted.

#### **19.02.030 Adoption or Amendment Procedures**

- A. The County shall adopt or amend the LUA and IIP as follows:
  - 1. The County shall conduct a public hearing on the draft IIP and LUA or amendments at least 30 days before approving or disapproving the IIP. Notice of the hearing shall be posted on the County's website, along with the draft IIP, LUA, and any other documents used in preparation, a minimum of 60 days prior to the hearing.
  - 2. The County shall approve or disapprove the LUA and IIP or amendment within 60 days after the public hearing and at least 30 days before the public hearing on the fee study.
  - 3. The County may update the IIP and/or LUA without a public hearing if the proposed changes will not increase the level of service or cause an increase in development fees by more than 5%. The county shall provide notice of the amendment at least 30 days prior to adoption and post the proposed amendments to its website.
- B. The County shall adopt or amend the impact fee study as follows:
  - 1. The County shall conduct a public hearing on the impact fee study at least 30 days after the adoption or approval of the IIP and at least 30 days before the scheduled date of adoption of the fees. The County must give at least 30 days' advance notice of intention to assess new or increased impact fees.
  - 2. The County shall approve or disapprove the impact fee study within 60 days after the public hearing.

3. Adopted or amended fees shall become effective no sooner than 90 days after adoption.

#### **19.02.040 Updating Procedures**

- A. The County shall update the LUA, IIP and impact fee study at least every five years from the most recent IIP adoption date. The County shall evaluate the current LUA and, if it determines that changes to the LUA, IIP, or fee study are needed, the procedures and public notice requirements of Section 19.02.020 shall apply.
- B. If after evaluating the current LUA the County determines that no changes to the LUA, IIP, or fee study are needed, the County may publish notice of the determination which includes the following:
  1. A statement that the County has determined no change to the LUA, IIP, or fee study is necessary.
  2. A description and map of the service area(s) in which an update has been determined to be unnecessary.
  3. A statement that by a specified date which is at least 60 days after the publication of the first notice, a person may request to the County in writing that the County update the LUA, IIP, or the fee study.
  4. A statement identifying the person or entity to whom the written request for an update should be sent.

## **Chapter 19.03 – ADMINISTRATIVE PROVISIONS**

### **Sections:**

- 19.03.010 Adjustments to Fees.
- 19.03.020 Fee Credits and Credit Agreements.
- 19.03.030 Development Agreements.
- 19.03.040 Fee Waivers.
- 19.03.050 Appeals.
- 19.03.060 Refunds.
- 19.03.070 Oversight and Reporting.
- 19.03.080 Intergovernmental Agreements.

### **19.03.010 Adjustments to Fees**

Impact fees shall be assessed according to the adopted fee schedule provided in Appendix A of this chapter, subject to any phased-in schedule approved by the Board of Supervisors, and further subject to the following adjustments:

- A. Impact fee rates in effect when the first building permit is issued (for a residential development) or when the final permit is issued (for a nonresidential development) shall be applied to all subsequent permits within the development for a period of 24 months unless subsequent changes are made to the approved plans that would increase the number of service units.

If the number of service units does increase, the applicable increased rate shall be applied to the additional service units. The 24 month period may not be extended by a renewal of or amendment to the approved site plan or final subdivision plat. On request, the County shall provide a written statement of the applicable impact fee rate. If the County reduces the impact fee rate after final approval of the plan or plat, the reduced fee rate shall apply to subsequently issued permits.

- B. Development impact fees shall not be assessed under the following conditions:
  - 1. If development impact fees were already paid for a development and the permit that triggered the collection of the development impact fees has not expired or been voided, no new fee shall be assessed. If the permit has expired or is voided, the fees due shall be the difference between any fees paid and those due at the time of reissue or renewal.
  - 2. If a single-family residence is replacing the same that was built or has been in existence prior to the first impact fee ordinance (February 26, 1996 or the date applicable to the adoption of impact fees for that previously designated benefit area), no impact fee shall be assessed. The burden is placed on the applicant to provide sufficient documentation to prove year of construction or establishment.

- C. If the building permit is for an expansion of an existing land use for a property that has previously paid an impact fee, the impact fee shall be assessed only for the area of expansion. If the applicant cannot prove that any fees have been paid, the fees due shall be for the entire building subject to the fee.
- D. If a developer seeks a new building permit for a different type of land use than the existing land use type with a higher fee rate, and the applicant can prove that a fee has been paid for the previous use, the assessed fee shall be the difference between the higher fee and the current fee for the existing development. If the applicant cannot prove that any fees have previously been paid, no reduction in fees shall be given. If the change is to a land use type with a lower rate than the existing use, no refund or reimbursement shall be issued.
- E. A developer may request an alternative fee calculation based on their projection that the actual burdens and costs associated with providing necessary public services to that development will differ substantially from the County's projected costs or will be substantially less than the amount projected to be paid by development fees. The County Administrator or designee shall review the request and shall make a determination as to the fee to be assessed. The assessed fee shall have a substantial nexus to the burdens and costs associated with the necessary public services or facility expansions. The fee determination is appealable to the Board of Supervisors.

#### **19.03.020 Fee Credits and Credit Agreements**

- A. Developers are entitled to credits towards the payment of impact fees if the developer dedicates, constructs, or otherwise provides an eligible offsite improvement for which the fee is assessed, subject to the following:
  - 1. The improvements must be identified in an adopted IIP and fee report as a facility for which an impact fee was assessed. If not included in the IIP, the County must have required as a condition of approval the provision of the improvements that will substitute for or otherwise reduce the need for other similar facilities in the IIP. The County shall amend the IIP to include the subject replacement facility and delete the facility that will be replaced.
  - 2. The improvements must be located within the same service area as the development.
  - 3. Credits shall not be available for any facility provided by a developer if the cost of the facility will be repaid to the developer by the County through another agreement or mechanism.
  - 4. The credit amount shall be the lessor of either the projected cost of the eligible facility identified in the IIP or the actual costs incurred by the developer in

providing the eligible facility. A credit amount shall not exceed the total sum of assessed impact fees.

5. It is the responsibility of the developer to request impact fee credits, which may be part of a development agreement.

**B. Credits shall only be issued pursuant to a credit agreement, subject to the following:**

1. The developer requesting the credit agreement shall provide all information requested by the County to determine the value of the credit to be applied.
2. The developer shall submit an application for a credit agreement within one year of the date on which ownership or control of facility passes to the County.
3. The developer shall submit a draft credit agreement to the County for review in the form provided by the County. The draft agreement shall include, at a minimum, the following:
  - a. A legal description and map showing the location of the development for which the credits are being applied as well as the facility that has been or will be provided.
  - b. An estimate of the total EDUs that will be developed within the submitted development.
  - c. The physical attributes and related cost of the facility to be provided.
  - d. Documentation showing the date of acceptance by the County if the facility has already been provided.
  - e. The total amount of credits to be applied within the development and the calculations used to develop the total amount of the credits.
  - f. The credits to be applied to each EDU within the development.
4. If the developer sells or relinquishes part of all of a development that it owns or controls before the execution of a credit agreement or development agreement, credits resulting from the eligible facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor.



5. If multiple entities jointly provide an eligible facility, all entities must enter into a single credit agreement with the County, and any request for credit allocation within the subject development must be made jointly.
6. Credits may only be reallocated from or within a subject development with the County's approval of an amendment to an executed credit agreement if the entity that executed the original agreement or its legal successor and the entity that currently controls the subject development are parties to the request for reallocation and the reallocation proposal does not change the value of any credits already issued.
7. The County's determination of the credits to be allocated is final.
8. Upon execution of the credit agreement, credits shall be deemed allocated to the development.
9. Any amendment to a previously approved credit agreement must be initiated within two years of the County's final acceptance of the eligible facility for which the amendment is requested.
10. Any credit agreement approved as part of a development agreement shall be amended in accordance with the terms of the development agreement and Section 19.03.030.
11. Credits shall only be issued when the eligible facility from which the credits were derived has been accepted by the County or when adequate security for the completion of the facility has been provided in accordance with all terms of an executed development agreement.
12. Where credits have been issued, an impact fee due 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 development demonstrates compliance with subparagraph 19.03.020(B)(11).
13. Once issued, credits may not be rescinded or reallocated to another permit or parcel except that credits may be released for reuse on the same development if a building permit for which the credits were issues has expired or been voided and is otherwise eligible for a refund.

#### **19.03.030 Development Agreements**

- A. Development agreements containing provisions regarding development impact fees, development impact fee credits, or disbursement of revenues from development impact fee accounts shall comply with the following:

1. A development agreement is required to authorize any of the following:
  - a. To issue credits before the County's acceptance of an eligible facility.
  - b. To reimburse the developer of an eligible facility using funds from development impact fee accounts.
  - c. To allocate different credit amounts per EDU to different parcels within a development.
  - d. 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 outlined in subparagraph 19.01.060(F).
2. All development agreements shall be prepared and executed in accordance with A.R.S. § 11-1101 and any applicable requirements of the County code.
3. A development agreement may authorize the issuance of credits before County acceptance of an eligible facility if the development agreement specifically states the form and value of the security (i.e., bond, letter of credit, etc.) to be provided to the County before the issuance of any credits. The County shall determine the acceptable form and value of the security to be provided.
4. If the credits are not to be allocated evenly, the development agreement must specify how credits will be allocated amongst different parcels on a per-EDU basis.
5. Funds reimbursed to developers from development impact fee accounts must be utilized in accordance with applicable law and standard procedures for the use of County funds in construction or acquisition of capital facilities.
6. A development agreement may provide for the deferral of payment of development impact fees for a residential development 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.
7. Nothing in this section obligates the County to enter into any development agreement or to authorize any type of credit agreement or reimbursement plan permitted by this section.

#### **19.03.040 Fee Waivers**

- A. If the County waives development impact fees for any development for any reason, the County shall reimburse the appropriate development impact fee account for the amount that was waived.

#### **19.03.050 Appeals**

- A. A development impact fee determination by the County may be appealed in accordance with the following procedures:
  - 1. An appeal shall be limited to disputes regarding the calculation of the development impact fees for a specific development or permit and calculation of EDUs for the development.
  - 2. An appeal shall be initiated in a format prescribed by the County.
  - 3. The County shall act upon the appeal within 30 calendar days of the filing of the appeal, and shall notify the applicant of its decision in writing.
  - 4. The applicant may appeal the decision to the Board of Supervisors within 14 calendar days of the County's decision.
  - 5. The Board of Supervisors shall hear and act upon the appeal within 45 calendar days of receipt of the appeal, and shall notify the applicant of its decision in writing.
  - 6. The Board's decision regarding the appeal is final.
  - 7. Building permits may be issued during the appeal process if the applicant pays the full impact fee calculated by the County as of the time of the appeal or provides the County with financial assurances in a form acceptable to the County. Upon final decision of the appeal, the fee shall be adjusted, and a refund paid if warranted. If the appeal is denied, and the applicant has provided the County with financial assurances, the applicant shall deliver the full amount of the impact fee to the County within 10 days of the Board's final decision on the appeal. If the applicant fails to deliver the full amount of the fees, the County may draw upon the financial assurance instruments as necessary to recover the full amount of the impact fees due from the applicant.

#### **19.03.060 Refunds**

- A. A refund or partial refund will be paid to any current owner of property within the County who submits a written request to the County and demonstrates that:

1. The permit that triggered the collection of the development impact fee has expired or been voided before the commencement of the development for which the permit was issued and the development impact fees have not been expended or pledged for the repayment of financing or debt; or
  2. The owner of the property or its predecessor paid a development impact fee and one of the following conditions exists:
    - a. The facility designed to serve the property has been constructed, has the capacity to serve the property and any development for which there is reserved capacity, and the service which was to be provided by that facility has not been provided to the property from that facility or from any other infrastructure.
    - b. After collecting the fee to construct a facility the County fails to complete construction of the facility within the time period identified in the IIP, as it may be amended, and the corresponding service is otherwise unavailable to the property from that facility or any other infrastructure.
    - c. Any part of a development impact fee is not spent within 10 years of the County's receipt of the development impact fee.
    - d. The development impact fee was calculated and collected for the construction of all or part of a specific facility serving the property and the actual construction costs for the facility are less than the estimated costs by 10% or more. In such an event, the current owner of the property is entitled to a refund for the difference between the amount of the development impact fee charged for and attributable to such construction costs and the amount the development impact fee would have been if the actual construction cost had been included in the fee report. The refund shall only relate to construction costs and shall not include any related design, administrative, or other costs.
- B. A refund of a development impact fee shall include any interest actually earned on the refunded portion of the fee by the County from the date of collection to the date of refund. All refunds shall be paid to the record owner of the property at the time the refund is issued.
- C. If a development impact fee was paid by a government entity, any refund shall be paid to that governmental entity.

#### **19.03.070 Oversight and Reporting**

- A. The County shall file an annual report accounting for the collection and use of the fees for each service area and shall post the report on its website within 90 days of the end of each fiscal year. The report shall include the following:

1. The amount assessed by the county for each type of development fee.
  2. The balance of each fund maintained for each type of development fee assessed at of the beginning and end of the fiscal year.
  3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.
  4. The amount of development impact fees used to repay:
    - a. Bonds issued by the County to pay the cost of a project in the IIP, including the amount needed to repay debt service and the time frames in which the debt service will be repaid.
    - b. Monies advanced by the County from funds other than impact fees to pay the cost of any project in the IIP, including the funding source and the terms under which the monies will be repaid to the County.
  5. The amount of impact fees spent on and the physical location of each project.
  6. The amount of development fees monies spent for each purpose other than a necessary public service or facility expansion that is the subject of a development fees assessment.
- B. The County shall provide a biennial, certified audit of the land use assumptions, infrastructure improvements plan, and development impact fees, which shall be conducted by qualified professional(s) who are not employees or officials of the county and who did not prepare the IIP. The audit shall review the progress of the IIP, collections and expenditures for each project in the IIP, and evaluate any inequities in implementing the IIP or imposing the impact fees. The County shall post the findings of the audit on the website and conduct a public hearing within 60 days of public notice.

#### **19.03.080 Intergovernmental Agreements**

- A. Pursuant to A.R.S. § 11-1103, the County may enter into an intergovernmental agreement to accept or disburse development impact fees for construction of a project contained in the IIP, including an agreement with a city or special taxing district for the joint establishment of a needs assessment, the adoption of an IIP, and the imposition, collection and disbursement of development impact fees to implement a joint plan for development.

## Appendix A: Roadway Development Impact Fee Schedule

Land Use Category	Unit	EDUs	Raw Fee	RTA Credit	Final Fee
<b>Residential</b>					
Single Family Detached	Dwell. Unit	1.0	\$8,592	\$69	\$8,523
Attached Residential/Multi-Family	Dwell. Unit	0.6	\$4,860	\$33	\$4,827
Senior Housing	Dwell. Unit	0.3	\$2,604	\$69	\$2,535
Assisted Living/Congregate Care	Dwell. Unit	0.2	\$1,562	\$17	\$1,545
Mobile Home Park	Dwell. Unit	0.5	\$3,992	\$27	\$3,965
<b>Commercial/Retail</b>					
Hotel/Motel	Rooms	0.5	\$2,290	\$21	\$2,269
Retail	1000 sf	1.2	\$5,472	\$30	\$5,442
Services	1000 sf	3.2	\$14,665	\$30	\$14,635
High-Traffic Retail/Services	1000 sf	5.9	\$27,406	\$41	\$27,365
<b>Industrial</b>	1000 sf	0.3	\$1,348	\$41	\$1,307
<b>Hospital/Clinic</b>	1000 sf	1.4	\$6,533	\$85	\$6,448
<b>Recreational</b>	1000 sf	2.6	\$12,882	\$39	\$12,843
<b>Office</b>					
General Office	1000 sf	1.0	\$4,635	\$41	\$4,594
Medical/Dental/Vet Office	1000 sf	3.0	\$13,826	\$41	\$13,785
<b>Public Schools</b>	1000 sf	0.5	\$2,540	\$44	\$2,496
<b>Charter/Private Schools</b>	1000 sf	1.1	\$5,648	\$44	\$5,604

1. Raw fees are the development fees before RTA credits are applied.
2. RTA credits were calculated based on estimated construction costs. Details of the calculations are in the IIP.
3. Recommended fees are the raw fees after applying the RTA credits.

**Section 2.** This Ordinance is effective on January 1, 2021.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this 17<sup>th</sup> day of August, 2020.

\_\_\_\_\_  
Chairman, Pima County Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney