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ORDINANCE NO. 1996-09

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, AMENDING THE PIMA COUNTY CODE BY ADDING NEW TITLE 19, ENTITLED "ROADWAY DEVELOPMENT FEE"; SETTING FORTH THE INTENT AND PURPOSE OF THE ORDINANCE; PROVIDING FOR THE IMPLEMENTATION OF THE ORDINANCE THROUGH THE CREATION OF SUBREGIONAL ROADWAY BENEFIT AREA PLANS; PRESCRIBING THE CONTENTS OF SUBREGIONAL ROADWAY BENEFIT AREA PLANS; SPECIFYING THE METHOD FOR CALCULATING DEVELOPMENT FEES; PROVIDING FOR THE ADMINISTRATION OF THE DEVELOPMENT FEE PROGRAM; AND PRESCRIBING PROCEDURES FOR APPEAL

The Pima County Board of Supervisors finds and declares that:

1. New development within the unincorporated areas of Pima County will create a need for new and increased capacity of roadway facilities.
2. New development should pay a proportionate share of the cost of improving and expanding the roadway system and facilities to accommodate the new development.
3. Subregional roadway benefit area plans should be prepared to project future roadway needs.
4. Travel behavior is wide-ranging, diffuse, and inter-related.
5. Subregional roadway benefit area plans provide a rational nexus for the computation of development fees which are in rough proportionality to the roadway infrastructure needs created by that development.
6. Development fees are an equitable and appropriate way to help finance the transportation infrastructure needed to serve new development.
7. Adoption of development fees authorized by A.R.S. § 11-1101 *et seq.* is the most appropriate and equitable method to assure that Pima County has the financial ability to continue to provide adequate roadways for all residents of the unincorporated areas of Pima County.

BASED ON THESE FINDINGS, the Pima County Board of Supervisors hereby ordains as follows:

Section 1. The Pima County Code is amended by adding new Title 19, to read as follows:

TITLE 19
ROADWAY DEVELOPMENT FEE
CHAPTER 19.1
GENERAL PROVISIONS

19.1.1 Title

This title shall be known as the "Pima County Roadway Development Fee" Ordinance, and will be referred to in this title as "this ordinance."

19.1.2 Legislative Intent and Purpose

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

- A. Implementing the Pima County Comprehensive Plan and the various Pima County and regional transportation planning tools for the preparation of subregional roadway benefit area plans ("SRBAPs").
- B. Requiring new development to pay its proportionate share of the costs to Pima County associated with providing necessary public services to the development as shown on SRBAPs.
- C. Setting forth standards and procedures for assessing development fees and administering the development fee program.

19.1.3 Definitions

Terms used in this ordinance shall have the definitions set forth in A.R.S. § 11-1101 and in Title 18 (Zoning) of the Pima County Code. In addition, the following definitions shall apply:

- A. "Building Permit" means the permit required for construction as determined pursuant to Title 15 (Buildings and Construction) of the Pima County Code. For purposes of Title 19, 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 subregional development fee for roadways shall be based upon the amount of the increase. For purposes of this ordinance, 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 18.03.020M.1 of the Pima County Code), multisectional manufactured home (as defined in Section 18.03.020M.2 of the Pima County Code) or factory-built building (modular) (as defined in Section 18.03.020F.1 of the Pima County Code).
- B. "Certificate of Occupancy" means the certificate of occupancy required by the Uniform Building Code as adopted and amended by Section 15.04.020 of the Pima County Code.

- C. "CIP" means the Capital Improvements Program, the adopted plan which itemizes the nature, extent, cost, anticipated funding, and phasing of capital improvements for Pima County.
- D. "Development Agreement" means an agreement between Pima County and either a community facilities district pursuant to Sec. 48-709, subsection C, a landowner or any other person having an interest in real property that may specify or is otherwise related to any of the following:
- (a) The duration of the agreement.
 - (b) The permitted uses of property subject to the development agreement.
 - (c) The density and intensity of uses and the maximum height and size of proposed buildings within such property.
 - (d) Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.
 - (e) Provisions for preservation and restoration of historic structures.
 - (f) The phasing or time of construction or development on property subject to the agreement.
 - (g) Conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time.
 - (h) Conditions, terms, restrictions and requirements relating to the governing body's intent to form a special taxing district pursuant to title 48.
 - (i) Conditions of sewer service.
 - (j) Any other matters relating to the development of the property.
- E. "EDU" or "Equivalent Demand Unit" means the effect on the usage of a roadway which is equivalent to that of a single-family Medium Density Residential dwelling.
- F. "Gross Density" means the total number of residential units to be constructed on a parcel of land divided by the size of the parcel in acres before dedication of any land required for roads and other public uses and before the creation of common areas included or to be included as part of the development of the parcel of land.
- G. "High Density Residential" means any residential development with a Gross Density equal to or greater than six residences per acre.
- H. "Low Density Residential" means any residential development with a Gross Density of less than three residences per acre.
- I. "Medium Density Residential" means any residential development with a Gross Density equal to or greater than three residences per acre and less than six residences per acre.

- J. "New Development" means any construction pursuant to a Building Permit (section 19.1.3A) issued after the effective date of the ordinance adopting the applicable subregional roadway development fee.
- K. "Retirement Community" means a residential subdivision which meets the Fair Housing Act requirements for "housing for older persons" (see 42 U.S.C. § 3607(b)).
- L. "SRBAP" means subregional roadway benefit area plan.
- M. "Subregion" or "subregional" refers to a geographic area encompassed within a specific benefit area plan and corresponding to a subregion designated in the Pima County Comprehensive Plan, or such geographic area as the Board of Supervisors may designate.
- N. "VMT" means vehicle-miles traveled; that is, the arithmetic product of the counted or estimated daily motorized vehicular traffic on a roadway segment times the length of the roadway segment in miles.

19.1.4 Applicability

This ordinance shall apply to all New Development within any subregion of Pima County for which a subregional roadway development fee has been adopted pursuant to section 19.2.5.

CHAPTER 19.2

PROCEDURES FOR ADOPTION OF ROADWAY DEVELOPMENT FEES

19.2.1 Development Fee Projects Plan

The Pima County development fee projects plan shall be a component of the roadway element of Pima County's CIP. All proposed expenditures for roadway projects funded or to be funded with development fees in the current fiscal year and at least the four fiscal years thereafter shall be identified in the CIP. As SRBAPs are recorded, the capital roadway improvements identified in the SRBAP to be funded with development fees shall be included in the CIP. The development fee projects plan component of the CIP shall be updated and adopted annually by the Board.

19.2.2 Subregional Roadway Needs Assessment

Before or in conjunction with the creation of a SRBAP pursuant to section 19.2.3, the Pima County Department of Transportation shall conduct a needs assessment for roadways within the subregion which are found in the development fee projects plan. The needs assessment shall:

- A. Identify the level of service standards upon which the development fee is to be based.
- B. Determine and distinguish between existing deficiencies and projected new development needs, applying the level of service standards upon which the development fee is to be based.
- C. Describe how Pima County plans to remedy the existing deficiencies.

- D. Inventory existing roadways which are to be included in the SRBAP.
- E. Identify the level of service standard applicable to each inventoried roadway.

Nothing in this Title shall be construed to require Pima County to remedy existing roadway deficiencies before adopting or imposing a development fee.

19.2.3 Subregional Roadway Benefit Area Plan (SRBAP)

Before assessment of a development fee for roadways, the Pima County Department of Transportation shall create a SRBAP for the subregion in which development fees will be applied. Each SRBAP shall comply with the following requirements:

- A. Each SRBAP shall determine the extent of capital roadway improvements needed or existing (see section 19.3.6) within the five year period immediately following the adoption of the subregional roadway benefit plan to serve the anticipated future development of the subregion, considering the Pima County Comprehensive Plan, the Metropolitan Transportation Plan, the Pima Association of Governments Transportation Improvement Program, the Pima County Transportation Needs Assessment, and the CIP.
- B. Each SRBAP shall determine the actual public facilities capital costs or reasonable estimates of capital costs incurred or to be incurred on projects any portion of which are to be funded with development fees within the five year period immediately following the adoption of the subregional roadway benefit plan
- C. Pima County shall determine the extent to which the costs determined in section 19.2.3B will be funded from sources other than roadway development fees.
- D.
- E. Each SRBAP shall project the total number of lane miles of the improvements set forth in section 19.2.3B.
- F. Each SRBAP shall use a projected daily average capacity per lane of 8,000 vehicles for the facilities identified in the SRBAP.
- G. Each SRBAP shall determine the projected VMT attributable to each EDU within the subregion.
- H. Each SRBAP shall determine the projected number of vehicle trips attributable to each EDU within the subregion.
- I. Each SRBAP shall determine the percentage of vehicle trips that both originate and terminate within the SRBAP, to assure that the same trips are not attributed to the development at both ends of the trip.
- J. Each SRBAP shall include an estimate of the timing of capital roadway improvement construction to be constructed with roadway development fees within the subregion. The estimate shall be related to the rate of new development projected to occur within the subregion.

- K. The SRBAP identifies the public facilities Pima County finds will bear a reasonable relationship to the needs created by development within the SRBAP.
- L. Each SRBAP shall be reviewed at least every two years and amended as necessary to update the estimates of capital roadway improvement needs (section 19.2.3A), costs (section 19.2.3B), and the amount of the fee. Any revision to the subregion's roadway development fee shall not be applied retroactively to amounts already paid.

19.2.4 Public Hearing on Subregional Needs Assessment and SRBAP

The subregional needs assessment and SRBAP shall be submitted to the Board at a public hearing. Notice of the hearing shall be published in a display advertisement covering not less than one-eighth of a full page in a newspaper of general circulation in Pima County.

19.2.5 Development Fee Ordinance Adoption

At or after the public hearing on the subregional needs assessment and the SRBAP, the Board shall set a time and date for a public hearing on the final adoption of the ordinance establishing the subregion's roadway development fee. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the subregional roadway benefit area shall be given at least fifteen days before the hearing by publication at least once in a newspaper of general circulation published or circulated in Pima County and by mail to each owner of record in the benefit area. A new or increased development fee assessed pursuant to this title is not effective until ninety days after its adoption by the Board. The subregional roadway benefit area shall be established, and the SRBAP shall be recorded, upon final adoption of the ordinance establishing the subregion's roadway development fee.

CHAPTER 19.3

ADMINISTRATIVE PROVISIONS

19.3.1 Residential EDU Determination

The number of residential EDUs generated by a New Development shall be determined by multiplying the number of dwelling units to be constructed as part of the New Development by the EDU Multiplier corresponding to the New Development's Land Use Type in the following table. Fractional EDUs shall not be rounded.

RESIDENTIAL EDU TABLE		
Land Use Type	EDU Multiplier	
	Normal	Retirement Community
Low Density Residential	1.25	0.94
Medium Density Residential	1.00	0.75
High Density Residential	0.75	0.56

19.3.2 Credits

Parties subject to the ordinance shall be entitled to all credits against the development fees provided by A.R.S. § 11-1101 *et seq.*, including, but not limited to, credits for the reasonable value of contributions, exactions, facilities advanced, dedicated, or improved by a developer.

19.3.3 Calculation of the Fee

Each New Development within a subregion for which a subregional roadway development fee has been adopted shall be assessed a fee calculated as follows:

- A. Multiply the New Development's EDUs (section 19.3.1) by the subregion's development fee for roadways.
- B. Subtract the credits (section 19.3.2).

19.3.4 Administration of Roadway Development Fees

- A. The roadway development fee program shall be administered by the Pima County Administrator or such persons or departments designated by the Pima County Administrator.
- B. The Development Impact Fees shall be assessed at the time the building permit is issued and shall be collected upon the issuance of a certificate of occupancy, or as may otherwise be provided for in a development agreement.
- C. The Pima County Development Services Department shall be responsible for collecting and accounting for development fees adopted pursuant to this title. Such fees shall be accounted for in a fund that clearly identifies the SRBAP for which the fee was imposed and the parcel for which the fee was collected. Development fees shall be invested with all interest accruing to the fund.
- D. Pima County Development Services Department shall retain copies of all needs assessments and benefit area plans and any other data sources on which the assessment of the development fee is based, and shall make such information available to the public on request.
- E. Development fees and any interest accrued on them shall be spent for capital roadway improvements that provide a beneficial use to the development that paid the fee, including debt service and administrative costs that relate to such improvements.

19.3.5 Appeals and Refunds; Procedures

- A. Right to Appeal. One who has paid a roadway development fee may appeal for a refund of all or a portion of the fee by filing an application for refund within thirty days after payment of the fee.
- B. Application for Appeal.
 - 1. The application shall contain, at a minimum, the following:

- a) An appeal cover sheet on a form provided by the Pima County Development Services Department.
- b) A legal description of the applicable property.
- c) A list, by name and title, of all ownership interests in the property (e.g., individual, corporation, trust or limited partnership), in accordance with A.R.S. § 33-506.
- d) A letter of authorization for an agent.
- e) Data specific to the development sufficiently detailing the technical basis for the appeal.
- f) A receipt or other evidence that the development fee being appealed has been paid.

2. Incomplete applications shall not be processed.

- C. Development Fee Appeals Panel. Upon submittal of a completed application, the appeal shall be set for a hearing before the Development Fee Appeals Panel, which shall be a three-member panel. The appeals panel shall contain at least two citizen representatives chosen by the Board of Supervisors. The hearing shall occur not more than forty-five days after submittal of the completed application. The appellant shall be given notice of the date, time and location of the hearing as soon as practicable after the submittal of the application, and in any event not less than five days before the hearing. Factual and technical evidence may be submitted on the appellant's behalf at the hearing. Not more than five days after the hearing, the Development Fee Appeals Panel shall render its written decision, a copy of which shall be mailed, first class postage prepaid, to the appellant at the address set forth on the appeal cover sheet.
- D. Appeal to Board of Supervisors. Not more than thirty days after the written decision of the Development Fee Appeals Panel is placed in the United States Mail, an appellant may request a hearing on the appeal before the Board of Supervisors. The hearing shall occur not more than forty-five days after submittal of the request. The appellant shall be given notice of the date, time and location of the hearing as soon as practicable after the submittal of the request, and in any event not less than five days before the hearing. Factual and technical evidence may be submitted on the appellant's behalf at the hearing. The Board may take whatever action with respect to the appeal as it deems appropriate.
- E. Waiver of Procedural Requirements by Appellant. An appellant may provide a written waiver of one or more procedural requirements contained in this section.
- F. Calculation of Time. In computing any period of time prescribed or allowed by this Title, the day of the act or event from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period of time is eleven days or more, intermediate

Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

- G. **Basis for Decision.** The Development Fee Appeals Panel or the Board shall refund all or a portion of the fee if it finds that the capital roadway improvements to be funded with the fee do not provide a benefit to the development, or if the benefit is less than was expected when the fee was adopted or last modified, or if the credit given pursuant to section 19.3.2 is found to be insufficient.
- H. **Refund for time-remote benefit.** Roadway development fees shall be encumbered for public facilities within five years after the date of collection unless a development agreement provides for a longer term. If the development fees are not encumbered within five years after the date of collection, Pima County shall refund the amount of the development fee along with accrued interest on the amount of the fee at the average annual rate of interest earned by the trust fund during the five year period to the owner of the property on which the fee was paid, unless a development agreement provides otherwise.

19.3.6 County Recoupment for Excess Capacity

A SRBAP may provide that Pima County may recoup through the subregion's development fee the costs of excess capacity in existing roadways identified in the SRBAP to the extent development is served by such existing roadways.

19.3.7 Infrastructure Not Included in SRBAP

This Title shall not affect any legal authority Pima County may have to disapprove a New Development which requires the construction of infrastructure not included in a SRBAP or to approve New Development conditioned upon the developer providing for such infrastructure.

19.3.8 Notification in Real Estate Closing Documents

As required by A.R.S. § 11-1108, real estate closing documents involving a parcel of land or improvements for which a development fee has been assessed or paid within five years of the closing shall include a written notification of the fact that a development fee has been assessed or paid and the location of a public office where information in regard to the rights and obligations arising from the assessment or payment of the fee can be obtained.

19.3.9 Waiver of Fee

The Board of Supervisors may waive development fees for all development that constitutes affordable housing to moderate, low or very low income households as defined by the United States department of housing and urban development, provided that the waiver does not result in an increase in the development fee for other properties in the SRBAP.

The Board of Supervisors may waive from development fee programs particular types and locations of development that are determined to serve an overriding public interest, provided

that the waiver does not result in an increase in the development fee for other properties in the SRBAP.

Section 2. The SRBAP for the Cañada del Oro Subregion is hereby established, and the Cañada del Oro SRBAP shall be recorded.

Section 3. The Cañada del Oro Subregion Roadway Development Fee is hereby adopted in the amount of \$1,550 per EDU for all residential uses.

Section 4. The Cañada del Oro Subregion Roadway Development Fee shall not be effective until ninety days from the date of the adoption by the Board of the last subregion roadway benefit area in Pima County for which a fee is proposed, with any such fee not to exceed \$1,550.

PASSED AND ADOPTED this 27th day of February, 1996, by the Pima County Board of Supervisors.

Paul G. Marsh
Paul G. Marsh, Chairman/
Board of Supervisors **FEB 27 1996**

ATTEST:

APPROVED AS TO FORM:

Jane S. Williams
Clerk, Board of Supervisors

Special Atty. Cassidy 3/1/96
Deputy County Attorney