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ORDINANCE No. 2003- 40

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY ARIZONA RELATING TO CAPITAL IMPROVEMENTS FUNDING AND DEVELOPMENT FEES; REPEALING ORDINANCES 1996-09, 1996-73 AND 1997-23 IN THEIR ENTIRETY; REPEALING CHAPTERS 19.01, 19.02 AND 19.03 OF THE PIMA COUNTY CODE IN THEIR ENTIRETY; ADOPTING NEW CHAPTERS 19.01, 19.02 AND 19.03 OF THE PIMA COUNTY CODE, ESTABLISHING BENEFIT AREAS AND PROVIDING FOR THE ASSESSMENT OF DEVELOPMENT FEES TO OFFSET THE CAPITAL COSTS FOR CONSTRUCTION OF STREETS AND ROADWAYS IN AREAS COVERED BY THE COUNTY'S CAPITAL IMPROVEMENT PLAN AND ESTABLISHING THE AMOUNT OF SUCH DEVELOPMENT FEES.

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. Travel behavior is wide-ranging, diffuse, and inter-related.
4. Development fees are an equitable and appropriate way to help finance the transportation infrastructure needed to serve new development.
5. Adoption of development fees authorized by A.R.S. § 11-1102 *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.
6. Pima County has developed a capital improvement plan, which sets forth the nature, extent, cost, anticipated funding, and phasing of capital improvements for Pima County, and has recently re-adopted its Comprehensive Plan for its area of jurisdiction.

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7. The County's capital improvement plan includes, among other things, a Development Fee Projects Plan which establishes Benefit Areas for the development of new roads and other transportation improvements.
8. In 1996, the Pima County Board of Supervisors adopted a development fee program pursuant to the then-existing version of A.R.S. § 11-1101 *et seq.*
9. In 2000, the legislature deleted the county development fee statute in its entirety and adopted a new county development fee program - A.R.S. § 11-1102 *et seq.*
10. The Pima County Board of Supervisors wishes to adopt a new development fee program to conform to the revisions of state statute and to fund its Development Fee Projects Plan component of the capital improvements plan.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AS FOLLOWS:

SECTION 1. That a new Chapter 19.01 is adopted to read as follows:

**TITLE 19
ROADWAY DEVELOPMENT 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.**

19.01.010 Title.

The ordinance codified in this title shall be known as the "Pima County roadway development fee ordinance" and will be referred to herein as "this title."

19.01.020 Legislative intent and purpose.

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

- A.** Implementing the Development Fees Project Plan portion of Pima County's Capital Improvement Plan.
- B.** Requiring new development to pay its proportionate share of the costs to Pima County associated with providing beneficial transportation facilities to the development as

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shown in the Development Fees Project Plan portion of the Capital Improvement Plan.

C. Setting forth standards and procedures for assessing development fees and administering the development fee program.

19.01.030 Definitions.

A. Except as provided in Subsection B of this "Definitions" section, the terms used in this title shall have the definitions set forth in A.R.S. Section 11-1102 and in Title 18 (Zoning) of the Pima County Code. In addition, the following definitions shall apply:

1. "Benefit Area Plan" refers to that component of the County's Capital Improvement Plan corresponding to a subregion designated in the Development Fee Projects Plan, the Pima County Comprehensive Plan, or such other area as the Board of Supervisors may designate.

2. "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 this title, 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 title, 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 18.03.020M1 of the Pima County Code), multi-sectional manufactured home (as defined in Section 18.03.020M2 of the Pima County Code) or factory-built building (modular) (as defined in Section 18.03.020F1 of the Pima County Code).

3. "CIP" means the capital improvements plan, the adopted plan which itemizes the nature, extent, cost, anticipated funding, and phasing of capital improvements for Pima County. The CIP includes, but is not limited to, the Development Fees Project Plan.

4. "Development agreement" means an agreement between Pima County and any one or more of the following:

- a. a community facilities district pursuant to A.R.S. § 48-709, subsection C.
- b. a landowner.
- c. any other person having an interest in real property as described in A.R.S. § 11-1101.

5. "EDU" or "equivalent dwelling unit" means the effect on the usage of a roadway which is equivalent to that of a single-family medium density residential dwelling.

6. "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.

7. "High density residential" means any residential development with a gross density equal to or greater than six residences per acre.

8. "Low density residential" means any residential development with a gross density of less than three residences per acre.

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9. "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.

10. "New development" means any construction pursuant to a building permit (Section 19.01.030A) issued after November 18, 1996.

11. "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)).

12. "VMT" means vehicle miles traveled; that is, the arithmetic product of the counted or estimated daily motorized vehicular traffic on a roadway segment multiplied by the length of the roadway segment in miles.

B. For purposes of calculating the Development Fee Amounts for Non-Residential Land Uses, the land use definitions set forth in the Institute of Transportation Engineers Trip Generation Handbook shall apply.

19.01.040 Applicability.

This title applies to all new development within Pima County for which a roadway development fee has been adopted pursuant to Section 19.02.040.

Chapter 19.02

PROCEDURES FOR ADOPTION OF ROADWAY DEVELOPMENT FEES

Sections:

19.02.010 Development fee projects plan.

19.02.020 Roadway needs assessment.

19.02.030 Roadway benefit area plan.

19.02.040 Development fee ordinance adoption.

19.02.010 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, in whole or in part, with development fees shall be identified in the development fee projects plan component of the CIP. As Benefit Area Plans are recorded, the capital roadway improvements identified in the Benefit Area Plan to be funded with development fees shall be included in the fee projects plan component of the CIP. The development fee projects plan component of the CIP shall be updated and adopted as necessary as determined by the board.

19.02.020 Roadway needs assessment.

Before or in conjunction with the creation of Benefit Area Plans pursuant to Section 19.02.030, the Pima County department of transportation shall conduct a needs assessment for roadways within 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;

19.02.040

- 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 Benefit Area Plan;
 - 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.

19.02.030 Roadway benefit area plan.

Before assessment of a new development fee for roadways, the Pima County department of transportation shall create a Benefit Area Plan for the geographic area in which development fees will be applied ("benefit area"). Each Benefit Area Plan shall comply with the following requirements:

- A. Each Benefit Area Plan shall determine the extent of capital roadway improvements needed or existing (see Section 19.03.060) to serve the anticipated future development of the benefit area, 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 Benefit Area Plan 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.
- C. Pima County shall determine the extent to which the costs determined in Section 19.02.030B will be funded from sources other than roadway development fees.
- D. Reserved.
- E. Each Benefit Area Plan shall project the total number of lane miles of the improvements set forth in Section 19.02.030B.
- F. Each Benefit Area Plan shall use a projected daily average capacity per lane of eight thousand vehicles for the facilities identified in the Benefit Area Plan.
- G. Each Benefit Area Plan shall determine the projected VMT attributable to each EDU within the benefit area.
- H. Each Benefit Area Plan shall determine the projected number of vehicle trips attributable to each EDU within the benefit area.
- I. Each Benefit Area Plan shall include an estimate of the timing of capital roadway improvement construction to be constructed with roadway development fees within the benefit area. The estimate shall be related to the rate of new development projected to occur within the benefit area.
- J. The Benefit Area Plan identifies the public facilities Pima County finds will bear a reasonable relationship to the needs created by development within the benefit area covered by the Benefit Area Plan

19.02.040 Development fee ordinance adoption.

- A. Prior to the adoption of a roadway development fee, the Department of Transportation shall prepare a report to the Board of Supervisors, including all appropriate documentation, that supports the assessment of new or increased roadway

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development fees. The report shall demonstrate that amount of the roadway development fee bears a reasonable relationship to the burden of capital costs imposed on the County to provide the roadways and roadway improvements set forth in the CIP that may serve the new development. In determining the extent of the burden imposed by the development, the Department of Transportation shall consider, among other things, the contribution made or to be made in the future in cash by taxes, fees or assessments by the property owner toward the capital costs of the necessary public service covered by the development fee. The report shall be forwarded to the Board of Supervisors for its consideration.

B. Development fees shall be assessed by the Board of Supervisors in a nondiscriminatory manner.

C. In determining and assessing a development fee applying to land in a community facilities district established pursuant to A.R.S. § 48-101 *et seq.* the Board of Supervisors shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

D. Prior to assessing or increasing a development fee the Board of Supervisors shall:

1. Give at least one hundred twenty days' advance notice of intention to assess a new or increased development fee.
2. Release to the public a written report including all documentation that supports the assessment of new or increased development fee.
3. Conduct a public hearing on the proposed new or increased development fee at any time after the expiration of the one hundred twenty day notice of intention to assess a new or increased development fee and at least fourteen days before the scheduled date of adoption of the new or increased fee.

Chapter 19.03 ADMINISTRATIVE PROVISIONS

Sections:

19.03.010 EDU determination.

19.03.020 Credits.

19.03.030 Calculation of the fee.

19.03.040 Administration of roadway development fees.

19.03.050 County recoupment for excess capacity.

19.03.060 Infrastructure not included in roadway benefit area plan.

19.03.070 Waiver of fee.

19.03.010 EDU determination.

A. Residential EDU Determination. The number of residential EDUs generated by a new residential development is 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.

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**Table 1
Residential EDU**

Land Use Type	EDU Multiplier	
	Standard	Retirement Community
Low and Medium Density Residential	1.00	0.75
High Density Residential	0.75	0.56

B. Non-Residential Use Fee Determination. The fee amount for a new non-residential development is determined multiplying the number of applicable Units, including proportional units, for the use, times the Fee Per Unit as set forth in the following table.

**Table 2
Non-Residential Fee Amounts**

Land Use Category	Unit	Fee Per Unit	
		effective as of July 7, 2003	effective as of January 1, 2004
General Commercial/Retail	1000 sf gfa*	\$1,074	\$ 2,148
Shopping Center	1000 sf gfa	\$ 632.50	\$ 1,265
Convenience Store/Gas Station	1000 sf gfa	\$6,274	\$12,548
Fast Food Drive Through	1000 sf gfa	\$2,575	\$ 5,150
Bank with Drive-Through	1000 sf gfa	\$3,824	\$ 7,648
"Big Box" retail-freestanding > 100,000 sf gfa	1000 sf gfa	\$ 693.50	\$ 1,387
Home Improvement Superstore	1000 sf gfa	\$ 527.50	\$ 1,055
Supermarket	1000 sf gfa	\$1,118.50	\$ 2,237
General Office	1000 sf gfa	\$ 635	\$ 1,270
Light Industrial	1000 sf gfa	\$ 804.50	\$1,609
Heavy Industrial	1000 sf gfa	\$ 504	\$1,008
Hotel/Motel	Room	\$ 495.50	\$ 991

* One Thousand Square Feet of Gross Floor Area.

C. Determination of Unlisted Non-Residential fee per Unit. The per Unit fee for non-residential uses not listed in the above tables is calculated using a methodology consistent with the methodology set forth in the department of transportation's "Task 2 and Task 3" Final Report: Non-Residential Roadway Development Fee Structure for Pima County, Arizona," dated February 12, 2003, and located in the Offices of the Pima County Department of Transportation.

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D. Roadway Impact Fee Adjustments based on Consumer Price Index. On July 1, 2004 and on each July 1 thereafter, the Fee per EDU and the Fee per Non-Residential Unit shall be increased based on the Consumer Price Index - Urban, U.S. City Average, All Items, 1982-84=100, Not Seasonally Adjusted (CPI-U) published by the United States Bureau of Labor Statistics. The Adjustment shall be computed by

1. calculating the percent increase in the CPI-U between:
 - a. the most recently published CPI-U at the time of the Adjustment and
 - b. the CPI-U for the same month of the previous year; and
- 2 multiplying the Roadway Development Fees in effect in the year immediately prior to the Adjustment; and
3. adding the resulting amount to the Roadway Development Fees in effect in the year immediately prior to the Adjustment.

19.03.020 Credits.

- A.** Parties subject to this title are entitled to all applicable credits against the development fees provided by A.R.S. Section 11-1102 et seq., including, but not limited to, credits for the reasonable value of contributions, exactions, facilities advanced, dedicated, or improved by a developer (collectively "Contribution").
- B.** A credit shall be given only for the reasonable value of a Contribution made by the property developer or owner within the five years prior to the date of the obligation to pay the impact fee. No Credit shall be given for Contributions made more than five years prior to the obligation to pay the development fee.
- C.** The value of the Credit is the reasonable value of the Contribution at the time the Contribution was made.
- D.** A developer or owner is only entitled to a Credit for a Contribution towards the improvements identified as Development Fee Projects in the adopted Benefit Area Plan in which the property is located.

19.03.030 Calculation of the fee.

Each new development shall be assessed a fee calculated as follows:

- A.** Multiply the new development's EDUs or Non-residential Unit Multiplier as set forth in Section 19.03.010 by the applicable development fee for roadways.
- B.** Subtract the credits (Section 19.03.020).

19.03.035 Administrative review of fee determination.

A review of final fee determination may be requested from the Impact Fee Program Manager as follows:

- A.** A request for administrative review may be filed only by the owner of the property and is limited to disputes regarding one or more of the following:
1. discounts for a retirement community as defined by US Title 42.
 2. discounts for high density zoning.
 3. replacement use exemption where one residence has been replaced by another.
 4. determinations of the property in an incorrect benefit area.

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- 5. the eligibility and amount of the credits to be credited against the preliminary development fee cost.
- B. Requests shall be in writing, on the form so prescribed and filed with the Department of Transportation and Flood Control District within ninety calendar days of a final fee determination.
- C. The Impact Fee Program Manager or designee shall respond to the request within twenty working days of the filing of a request form.
- D. Building permits may be issued during the pendency of an Administrative Review if the applicant pays the fee at the time the permit is issued. Upon final disposition of a request, the fee shall be adjusted in accordance with the decision rendered and, if applicable, a refund will be paid to the property owner

19.03.040 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 and paid at the time the building permit is issued.
- C. The Pima County development services department is responsible for collecting and accounting for development fees adopted pursuant to this title. The fees shall be accounted for in a separate fund as provided for in A.R.S. § 11-1102(B) that clearly identifies the benefit area for which the fee was imposed. Development fees previously assessed under Ordinance 1996-73 shall be deposited in the separate fund and allocated to the benefit area that most closely correlates with the Benefit Area for which the fee was imposed. Development fees shall be invested with all interest accruing to the fund.
- D. Pima County department of transportation 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.
- F. The County shall expend the collected development fees within a reasonable time for the purposes for which they were collected.

19.03.050 County recoupment for excess capacity.

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

19.03.060 Infrastructure not included in CIP.

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 the CIP or to approve new development conditioned upon the developer providing for such infrastructure.

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19.03.070 Waiver of fee.

A. 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 Benefit Area Plan.

B. 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 Benefit Area Plan.

SECTION 2. The Benefit Area Plan for the Altar Valley Benefit Area is hereby established and shall be recorded.

SECTION 3. The Benefit Area Plan for the Avra Valley Benefit Area is hereby established and shall be recorded.

SECTION 4. The Benefit Area Plan for the Canada Del Oro Benefit Area is hereby established and shall be recorded.

SECTION 5. The Benefit Area Plan for the Catalina Foothills Benefit Area is hereby established and shall be recorded.

SECTION 6. The Benefit Area Plan for the Mountain View Benefit Area is hereby established and shall be recorded.

SECTION 7. The Benefit Area Plan for the Rincon Valley Benefit Area is hereby established and shall be recorded.

SECTION 8. The Benefit Area Plan for the San Xavier Benefit Area is hereby established and shall be recorded.

SECTION 9. The Benefit Area Plan for the Santa Cruz Benefit Area is hereby established and shall be recorded.

SECTION 10. The Benefit Area Plan for the Silverbell-Tortolita Benefit Area is hereby established and shall be recorded.

SECTION 11. The Benefit Area Plan for the Tucson Mountains Benefit Area is hereby established and shall be recorded.

SECTION 12. The Roadway Development Fee for the Altar Valley, Avra Valley, Canada Del Oro, Catalina Foothills, Mountain View, the Rincon Valley, San Xavier, Santa Cruz Valley, Silverbell-Tortolita, and Tucson Mountains Benefit Areas is adopted in the amount of

1. \$2,500 per EDU for all residential uses; and
2. the per Unit fee for all non-residential land uses established in Section 19.03.010, Table 2 and subsection C, and shown as effective on July 7, 2003.

SECTION 13. Effective January 1, 2004 the Roadway Development Fee for the Altar Valley, Avra Valley, Canada Del Oro, Catalina Foothills, Mountain View, the Rincon Valley, San Xavier, Santa Cruz Valley, Silverbell-Tortolita and Tucson Mountains Benefit Areas is adopted in the amount of

1. \$3,500 per EDU for all residential uses; and
2. the per Unit fee for all non-residential land uses established in Section 19.03.010, Table 2 and subsection C, and shown as effective on January 1, 2004.

SECTION 14. Ordinance Numbers 1996-09, 1996-73 and 1997-23 are repealed in their entirety.

SECTION 15. Chapters 19.01 and 19.02 of the Pima County Code are repealed in their entirety.

SECTION 16. All provisions of Chapter 19.03 of the Pima County Code, except for Section 19.03.050, are repealed in their entirety.

SECTION 17. Section 19.03.050 of Chapter 19.03 of the Pima County Code is repealed in its entirety.

SECTION 18. Section 17 is effective thirty one days after adoption by the Board of Supervisors, except that

1. repealed Section 19.03.050 shall continue to apply to appeals filed prior to the effective date of Section 17; and
2. the Development Fees Appeal Panel shall continue in existence until all appeals filed prior to the effective date of Section 17 are decided.

SECTION 19. All other Sections of this Ordinance shall not be effective until ninety days after adoption by the Board of Supervisors.

SECTION 20. If any provision of this Ordinance is for any reason is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED AND ADOPTED this 8th day of April, 2003, by the Pima County Board of Supervisors.

PIMA COUNTY BOARD OF SUPERVISORS

Shawn Brown
Chair, Pima County Board of Supervisors

Date: APR 08 2003

ATTEST:

Robert Brizade, Deputy
Clerk of the Board of Supervisors

APR 08 2003

APPROVED AS TO FORM:

K. Richter
Deputy County Attorney

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