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Impact Fees Regulations

Section 1. INTENT

The following Administrative Rules and Procedures shall guide the Impact Fees Administrator in the administration of the City of Albuquerque Development Impact Fee Ordinance Enactment Nos. 0-2004-51, 0-2004-52, 0-2004-53, and 0-2004-54 (hereinafter referred to as the Impact Fee Ordinances, and Resolution 04-159) that become effective July 1, 2005. These Administrative Rules elaborate upon the administrative directions contained in the Impact Fee Ordinance and are intended to be used in conjunction with the Impact Fee Ordinance in their implementation and administration.

Tables and forms are provided for use in determining the amount of the impact fee for each land development activity. In construing these Rules, all words, phrases and terms contained here shall have the same meaning as defined in the City of Albuquerque Impact Fee Ordinances in the New Mexico Development Fee Act (§ 5-8-1 *et seq.*, NMSA 1978) and the City of Albuquerque Subdivision Ordinance and Zoning Code.

Section 2. ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY

A. Impact Fees Administrator

The Impact Fees Administrator is hereby authorized to interpret and enforce all provisions of these Rules and the appropriate Impact Fee Ordinance of the City of Albuquerque and to carry out the general administration of all impact fees enacted by the City of Albuquerque. The Impact Fees Administrator shall have the responsibility to carry out the following:

1. When no equivalent type of land use is present in either the fee schedule or in the City's Comprehensive Zone Code, or is a previously determined miscellaneous land use, the Impact Fees Administrator shall establish a fee applicable to the most nearly equivalent type of land use on the fee schedule.
2. When requested by the fee payer, the Impact Fees Administrator shall assess and certify the impact fee applicable to a particular development using the procedures described in the applicable Impact Fee Ordinance and in these Administrative Rules. The impact fee assessment certification shall be valid for a period of four (4) years.
 - a. The Impact Fees Administrator shall calculate and assess the impact fee as follows:
 - i. Determine the applicable service area;
 - ii. Determine the applicable land use category;

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- iii. Verify the number of dwelling units or the amount of gross floor area (whichever is applicable) in the development; and
 - iv. Multiply the number of dwelling units or the amount of gross floor area, whichever is applicable, by the applicable impact fee from the schedule in Exhibit E.
 - b. If the assessment occurs at the time of preliminary plat or site plan approval, the assessment may be estimated based on the applicable fee schedule and be finalized no later than building permit.
3. With respect to an independent fee determination (see section 5.), the Impact Fees Administrator shall:
- a. Conduct a pre-application meeting with the applicant and representatives of appropriate departments of the City;
 - b. Review the independent fee determination study for sufficiency, methodology, technical accuracy and findings; and
 - c. Establish the amount of the impact fee as a result of the independent study based on the procedures described in the applicable Impact Fee Ordinance and in these Administrative Rules.
4. The Impact Fees Administrator has sole authority to determine exemptions from a requirement to pay an impact fee or reduction in the amount of the fee.
5. The Impact Fees Administrator shall determine the availability of and the amount of any refund of an impact fee.
6. The Impact Fees Administrator shall calculate the additional impact fee due in the event of change of use, redevelopment, or modifications of an existing use.
7. The Impact Fees Administrator shall calculate and grant credits for contributions, dedications or improvements that may be used to offset any impact fee otherwise due.
8. The Impact Fees Administrator shall maintain separate interest bearing accounts clearly identifying the payor and category of capital improvements within the service area in which the fee was collected.
9. A notice of impact fee assessment for the site shall be included on the final plat.

B. Other Departments

Other departments and offices of the City of Albuquerque shall provide advice, information, or other such services upon the request of the Impact Fees Administrator.

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Section 3. IMPOSITION OF IMPACT FEE

A. Feepayer

Any person who, after the effective date of the appropriate Impact Fee Ordinance, seeks to engage in a new development by applying to the City of Albuquerque for any of the following permits shall be required to pay an impact fee in the manner and amount set forth in the relevant ordinance and in these Administrative Rules:

1. The issuance or extension of a building permit, or certificate of occupancy in the case of a mobile home.
2. The issuance or extension of a permit that would allow the construction or installation of a structure, including a mobile home.

B. Determination and Assessment of the Impact Fee

1. **General.** The amount of the impact fee shall be determined by the Impact Fees Administrator, who shall receive assistance from other departments when necessary and appropriate. The Impact Fees Administrator shall determine whether the method of fee determination is based on the fee schedule contained in the appropriate Impact Fee Ordinance or by an independent fee determination study. The calculation of exemptions, refunds, and credits, and the determination of the net impact fee due shall also be the responsibility of the Impact Fees Administrator with the assistance of appropriate City of Albuquerque Departments.
2. **Assessment of Fee.** The impact fee shall be assessed as follows:
 - a. For land that is platted or replatted on or after July 1, 2005, the impact fee shall be assessed for new development no later than at the time the subdivision plat is recorded; *EFFECTIVE*
 - b. For land that received preliminary or final plat approval between December 10, 2004, and July 1, 2005 and is not exempt pursuant to paragraph d. below, or for development that occurs on existing lots of record, also not exempt pursuant to paragraph d., the impact fee shall be assessed at the time of plan check or issuance of a building permit; *ENACTMENT*
 - c. Development approvals resulting in vested rights acquired prior to December 10, 2004 shall not be subject to an impact fee. However, development approvals resulting in vested rights acquired prior to December 10, 2004 shall be subject to an impact fee if a building permit has not been procured within two (2) years of the effective date of the Impact Fee Ordinances.
 - d. For the purpose of the Impact Fee Ordinances and these Administrative Rules, vested rights shall mean development rights acquired and resulting from building permit approval, final plat approval, preliminary plat approval, or EPC or DRB site plan for subdivision or site plan for building permit approval obtained prior to the enactment date (December 10, 2004) of the Impact Fee Ordinance. Vested rights arising from such approvals shall expire if a building permit has not been issued within two (2) years from the effective date of the Impact Fee Ordinance and the impact fee may be assessed and collected thereafter.

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- e. No impact fee shall be collected on applications for building permits that are deemed complete prior to July 1, 2005.
- f. The fees in effect when an application for building permit is deemed complete are the impact fees to be collected.
- g. The assessment of an impact fee shall be in writing and shall be valid for four years.

C. Payment Due [Collection Of Impact Fee]

1. **General.** The impact fee shall be collected prior to issuance of a building permit. All payments shall be made in the following manner:
 - a. Payment by approved credit card, personal or business check, cashier's check, or money order payable to City of Albuquerque;
 - b. All payments are to be made at offices of the City of Albuquerque, Development and Building Services Division of the Planning Department; and
 - c. In lieu of monetary payment, up to 100% of an impact fee due may be paid by the use of applicable credits as defined in Section 10.
2. **Invalid Payment.** In the event the payment of an impact fee subsequently proves to be invalid due to insufficient funds, improper execution, or for any other reason, then the following actions shall be taken:
 - a. The Impact Fees Administrator shall, within thirty (30) days of detection of such a deficiency, notify the feepayer, the contractor, and the property owner by certified mail that:
 - i. An impact fee amount is due by valid payment immediately upon receipt of said notice; and
 - ii. Permits, inspections or certificates of occupancy will not be issued until the amount is paid and, if not paid within thirty (30) days, the Impact Fees Administrator shall have authority to instruct the City of Albuquerque Building Department to stop all construction on the site until the payment is received.
 - b. No further building permits, construction permits, inspections or certificate of use and occupancy (C.O.) shall be issued by the City of Albuquerque until the required impact fee is paid; and
 - c. The amount due shall be the amount of the impact fee plus the amount charged by the bank for the dishonored payment, plus a service charge as established by City of Albuquerque.
3. **Credits Prior to Completion.** In the event the feepayer has received approval from the Impact Fees Administrator for credits for construction of system improvements and the credits are to be applied before completion of the improvements, the following requirements shall be met:

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- a. The feepayer shall submit to the Impact Fees Administrator in the form attached as Exhibit G an irrevocable letter of credit for an amount equal to 125% of the full amount of the completion cost of the system improvements. The letter of credit shall be payable to the City of Albuquerque and shall be approved by the City Attorney prior to acceptance;
- b. The feepayer shall procure a City Work Order for the construction of the creditable improvements; which Work Order shall include:
 - i. A performance and warranty bond shall be issued by a company registered in and licensed to do business in the State of New Mexico, for the purpose of securing faithful performance of the construction and to indemnify the City for any damages associated with failure to satisfactorily perform construction, and shall be effective for one (1) year after the City issues a certificate of completion and acceptance;
 - ii. The performance and warranty bond shall be reviewed and approved by the City Attorney prior to acceptance of the bond by the Impact Fees Administrator; and
 - iii. The performance and warranty bond shall be renewed not later than sixty (60) days prior to the renewal date. In the event of a notice to cancel or of intent not to renew, the Impact Fees Administrator shall be entitled to declare a default and make demand on the full amount of the bond.

D. Expiration of Building Permits

- 1. If a building permit expires, is revoked, or is voluntarily surrendered and is, therefore, voided and no construction or improvement of land has commenced, then the feepayer shall be entitled to a refund, without interest, of 97% of the impact fee which was paid as a condition for its issuance. The City shall retain 3% of the fee for administrative costs. The feepayer must submit an application for such a refund to the Impact Fees Administrator at least thirty (30) days prior to the expiration of the permit. In the case of an expired permit which was obtained in whole or in part by the use of credits, only that portion not paid by credits may be refunded. The feepayer shall apply to the Impact Fees Administrator to reinstate the credits that were not utilized. Any request to reinstate a credit must be made at the time of reapplication or it shall be deemed waived.
- 2. If a refund has been received by the feepayer, the feepayer must pay the appropriate impact fee if reapplication is made for a permit. If a permit expires and no refund has been issued, a feepayer will not be required to pay the fee again if reapplication is made for the permit on the same lot, parcel or tract unless the use or size of the structure has changed within the previous four (4) years of the original assessment. In the event the use or size of the structure has changed, the amount due would be the change in the amount of the fee based upon the new structure or use.
- 3. A credit for previous payment of an impact fee must be requested by the feepayer. Any credit not so requested at the time of reapplication shall be deemed waived by the feepayer.

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4. A refund of the impact fee shall not be granted if the permit expires and construction has commenced. In this case, the feepayer will not have to pay the impact fee if reapplication is made for a permit for the same type and size of structure.

E. Private Security

No credit will be given against a public safety impact fee for the provision of private security services or facilities.

F. Private Fire Protection or Rescue

No credit will be given against a public safety impact fee for the provision of private fire protection or rescue services or facilities.

Section 4. DETERMINATION OF AN IMPACT FEE BASED ON FEE SCHEDULES

A. Payment from Schedule

The amount of the impact fee shall be determined from the fee schedule attached as Exhibit E and utilizing Exhibit B, Impact Fee Calculation Form:

If the type of land use is not specified in the fee schedule or in the City's Comprehensive Zone Code, the Impact Fees Administrator shall apply the fee of the most nearly equivalent type of land use on the fee schedule.

The Impact Fees Administrator shall be guided in the selection of a comparable land use type by the City of Albuquerque Comprehensive Plan and the land development regulations of the City of Albuquerque, including but not limited to the Comprehensive Zone Code and Subdivision Ordinance.

If a feepayer shall opt not to have the impact fee determined according to the fee schedule, then the feepayer shall prepare and submit an independent fee determination study in accordance with the appropriate Impact Fee Ordinance.

In the event that the sub-classification of a particular use of land into the classification established by the Ordinance is unclear, the *North American Industry Classification System, United States*, latest edition, shall be used as a guide.

B. Residential Heated Area

The amount of the impact fee for residential structures shall be based on the floor area of the structure that is designed to be provided with heat and/or air conditioning and not on gross floor area of the structure.

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C. Gross Floor Area

The amount of the impact fee for non-residential structures shall be based on the total floor area, including basements, mezzanines and upper floors, if any, expressed in square feet and measured from the outside surface of the outside walls.

D. Mixed Use Development

If a development includes both residential and non-residential uses, the impact fee is to be assessed for each use based on the fee schedule and the results added together. If the owner can substantiate that the impact of the mixed use project justifies a lower impact fee proportionate to the impact reduction, then the Impact Fees Administrator may consider a proportionate reduction of the impact fee. The Impact Fees Administrator is encouraged to utilize the Shared Parking section of the Zoning Code, the ULI Shared Parking Standards, and the ITE Manual for guidance.

E. Mixed Use Structures

If a structure includes both residential and non-residential uses, the impact fee is to be assessed for each use individually based on the relevant fee schedule and the results added together. If the owner can substantiate that the impact of the mixed use project justifies a lower impact fee proportionate to the impact reduction, then the Impact Fees Administrator may consider a proportionate reduction of the impact fee. The Impact Fees Administrator is encouraged to utilize the Shared Parking section of the Zoning Code, the ULI Shared Parking Standards, and the ITE Manual for guidance.

F. Shell Permit

Subject to the following qualifications, an impact fee shall not be assessed for tenant development improvements. Builders will often apply for a building permit to construct the "shell" of a building. Remodeling permits would be issued later to finish construction of the interior of the structure. The impact fee shall be paid prior to the issuance of the building permit for construction of the shell. The amount of the fee should be based on the intended land use as described by the builder. If a builder applies for a "shell" permit and the intended land use is not known, the impact fee shall be assessed based on that land use which generates the greatest impact and is allowed under the existing zoning for the lot or parcel. If it is found during review of the application for a Tenant Improvement Permit that the actual land use differs from the intended land use as described in the application, a determination shall be made as to whether or not an additional impact fee is due based on the procedures for change of use. If so, the additional impact fee shall be paid prior to the issuance of the Tenant Improvement Permit. If it is determined that there has been an over-payment of an impact fee, a refund would become available pursuant to the refund provisions of these Administrative Rules.

If a shell permit is deemed complete prior to July 1, 2005, and left unfinished, an impact fee shall not be assessed at the time of reapplication of a shell permit. Subsequent change of use, redevelopment, or modification of the structure may be subject to an impact fee based on the procedures for change of use.

G. Change of Use

In the case of a change of use, redevelopment, or modification of an existing use which requires the issuance of a building permit, the impact fee shall be based upon the net increase in the impact fee for

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the new use as compared to the previous use. The amount of the impact fee that is due as a result of the change in land use shall be determined at the time the feepayer applies for a building permit. The impact fee shall be paid prior to the issuance of a building permit for construction or remodeling.

Previous land use shall be the lawful land use physically existing on the effective date of the ordinance or the current lawful land use. The feepayer shall furnish all documentation required by the Impact Fees Administrator to determine the previous use.

Should the change of use, redevelopment, or modification result in a net decrease in the impact fee, no refunds or credits for the impact fee previously paid shall be made.

If the change of land use does not require the issuance of a building permit, then there shall be no requirement to pay an impact fee.

H. Accessory or Auxiliary Uses

Generally, no impact fee shall be assessed for accessory or auxiliary land uses, such as a clubhouse or tennis court in an apartment complex, unless it can be established by the Impact Fees Administrator that the land use constitutes an independent function. However, structures that meet the definition of a "dwelling" in the City of Albuquerque Building Code are not exempted as accessory or auxiliary uses.

I. House Moves and Mobile Home Moves

An impact fee shall be assessed for structures or mobile homes moved from one location to another unless the structure or unit being moved is a replacement of an equivalent use at the new location. If the structure or mobile home moved is replaced by an equivalent use at the old location, no impact fee shall be due for the replacement use.

J. Recreational Vehicles (RVs)

The development of an RV site is the relevant regulatory issue for this Administrative Rule and the administration of an impact fee.

K. Model Homes

Model homes on residentially zoned land shall be charged a residential impact fee. Model homes on non-residentially zoned land shall be charged a non-residential impact fee.

L. Remodeling and Redevelopment

When a change of use, redevelopment or modification of an existing commercial use or building requires a building permit, the impact fee shall be calculated based on the pro rata difference between previous use and the proposed use.

Remodeling or additions to single family dwelling units shall not be subject to an impact fee.

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M. Miscellaneous Land Use Types

The Impact Fees Administrator shall maintain a list of the rulings made of any administrative determination.

Section 5. INDEPENDENT FEE DETERMINATION

A. Option of the Feepayer

If a feepayer shall opt not to have an impact fee determined according to the fee schedule in Exhibit E, then the feepayer shall prepare and submit an independent fee determination in accordance with these Administrative Rules and the appropriate impact fee. Any submission not so made at the time of building permit application shall be deemed waived.

The utilization of this option by the feepayer shall not exempt the applicant from paying the impact fee prior to the issuance of a building permit.

B. Notice of Intent by Feepayer

The feepayer shall inform the Impact Fees Administrator of the feepayer's intent to utilize an independent fee determination. The Impact Fees Administrator shall then schedule a pre-application meeting with the applicant.

C. Pre-Application Meeting

Before beginning the independent fee determination study, the feepayer or the feepayer's representative shall be given the opportunity to attend a pre-application meeting with the Impact Fees Administrator. The purpose of the pre-application meeting is to discuss the procedures of the independent fee determination study, the methodology to be employed, the standards to be met, and to reduce the meeting to a letter of understanding.

Results, conclusions, and agreements reached at the pre-application meeting regarding methodology, required forms or documentation, or procedures, which shall not constitute a waiver of ordinance provisions, shall be placed in a letter of understanding by the Impact Fees Administrator within fifteen (15) days from the pre-application meeting. A copy of this letter of understanding shall be sent to the applicant. The agreements set out in the letter of understanding will expire in thirty (30) days from receipt unless the applicant acknowledges acceptance of the agreements in writing to the Impact Fees Administrator.

The applicant may waive the pre-application meeting. Any applicant who waives a pre-application meeting has waived his/her right to administratively raise methodological or procedural issues at a subsequent time.

D. Guidelines

1. The purpose of the independent determination study is to measure the impact of the development in question on the roadway facilities, drainage facilities, parks, recreation, trails, open space facilities, or the public safety facilities of the City of Albuquerque.

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2. An independent fee determination study must address the expected impact of the development over the projected life of the structures on the system improvement. Any claim that the use or occupancy of the structures within the development will be different from normal use or occupancy must be supported by the appropriate zone change or other appropriate documentation that will support the claim.
3. The independent fee determination study shall follow the methodologies and formats which are agreed upon during the pre-application meeting and be in accord with any documentation or methodology required by these Administrative Rules and the appropriate Impact Fee Ordinance.
4. The independent fee determination study shall be prepared and presented by qualified professionals in good standing in their respective fields. The methodology shall be consistent with best professional practice and support the central claim of the study. The study shall provide all necessary supporting documentation and information. Failure to adhere to best professional standards is a basis for rejection of the study. The applicant's submission must be certified that the study complies with best professional practices.
5. The applicant shall submit the independent study to the Impact Fees Administrator.
6. The applicant shall provide the Impact Fees Administrator with the name, address and telephone number of the property owner, the professional preparing the study, and the applicant.

E. Sufficiency Determination

1. The Impact Fees Administrator will review the independent fee determination study for sufficiency, methodology, technical accuracy and findings. The Impact Fees Administrator shall have thirty (30) days to review the study and to inform the applicant, in writing, of any deficiencies or defects in the study, or to find the study complete and acceptable. A notice of acceptance or non-acceptance shall be mailed to the applicant. In the event that the notice is not given within thirty (30) days, the study shall be considered complete and acceptable.
2. Upon receipt of a notice of non-acceptance, the applicant may modify or supplement the study and resubmit a modified study. The Impact Fees Administrator will consider the independent fee determination study to be withdrawn and the letter of understanding expired if the Impact Fees Administrator does not receive a response from the applicant within thirty (30) days of receipt of the above notice.
3. Upon receipt of a response or resubmittal of the study, the Impact Fees Administrator shall have thirty (30) days to review the resubmittal or response and notify the applicant of any defects or deficiencies in the submission. If the Impact Fees Administrator finds deficiencies or defects in a resubmitted study, notice of such deficiencies or defects shall be provided as in paragraph 2. above. If the feepayer disagrees with the findings or decisions of the Impact Fees Administrator, the feepayer may appeal the decision as outlined in the applicable ordinance.

F. Determination of Impact Fee

The determination of the amount of the applicable impact fee shall be made by the Impact Fees Administrator based on review of a complete and acceptable independent fee determination study.

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G. Effective Date

The effective date for an impact fee assessed by an independent fee determination study shall be the date at which the Impact Fees Administrator issues a notice of acceptance for the independent fee determination. The independent fee determination shall be valid for four (4) years.

H. Application for Permit

It shall be the responsibility of the feepayer, at the time of application for a building permit, to present the approved independently determined fee as approved by the Impact Fees Administrator.

Section 6. COLLECTION AND DEPOSIT OF THE IMPACT FEE

A. Road (Transportation) Impact Fee

1. **Service areas.** There are currently eight (8) Road (Transportation) Service Areas within the incorporated area of City of Albuquerque.
2. **Deposit of the impact fee.** All road impact fees collected shall be properly identified by road development impact fee service area and promptly transferred for deposit in the appropriate Road Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

B. Drainage (Stormwater) Impact Fees

1. **Service areas.** There are currently five (5) Drainage (Stormwater) Service Areas within the incorporated area of City of Albuquerque.
2. **Deposit of the impact fee.** All drainage impact fees collected shall be properly identified by drainage development impact fee service area and promptly transferred for deposit in the appropriate Drainage Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

C. Park and Recreation Impact Fees

1. **Service areas.** There are currently seven (7) Park and Recreation Development Impact Fee service areas within the City of Albuquerque.
2. **Deposit of the impact fee.** All park and recreation impact fees collected shall be properly identified by park and recreation development impact fee service area and promptly transferred for deposit in the appropriate Park and Recreation Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

D. Public Safety Impact Fees

1. **Service areas.** There are currently two (2) Public Safety Impact Fee Service Areas.

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2. **Deposit of the impact fee.** All public safety impact fees collected shall be properly identified and promptly transferred for deposit in the appropriate Public Safety Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

Section 7. USE OF IMPACT FEE FUNDS

A. Purpose

Funds collected from Road, Drainage, Public Safety and Parks and Recreation, Trails and Open Space development impact fees shall be used for the purpose of acquiring and/or making systems improvements to Drainage Facilities, Public Safety Facilities, Parks Recreation, Trails and Open Space Facilities and Roads Facilities under the jurisdiction of the City of Albuquerque, the State of New Mexico, or other political subdivisions, and shall not be used for maintenance or operations.

B. System Improvements

1. At least once each fiscal year the Impact Fees Administrator shall present to the City Council a report describing the amount of development impact fees collected, encumbered and used, and a proposed Component Capital Improvement Program for system improvements, which assigns funds, including any accrued interest, from the several Development Impact Fee Fund accounts to specific system improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Development Impact Fee Fund account until the next fiscal period except as provided by the refund provisions of this rule and the Development Impact Fee Ordinance.
2. Funds shall be used exclusively for acquisitions, expansions, or capital improvements on the City's Component Capital Improvements Plan and within the Development Impact Fee Service Area from which the funds were collected.
3. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which development impact fee may be expended, development impact fee may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subparagraphs 1. and 2. above.
4. In the event a developer enters into an agreement with the City to construct, fund or contribute system improvements so that the amount of the credit created by such construction, funding or contribution is in excess of the development impact fee otherwise due, the developer shall be reimbursed for such excess construction funding or contribution from development impact fees paid by other developments located in the service area which is benefitted by such improvements.
5. Only impact fees collected may be used to provide refunds.
6. Funds shall be considered expended on a first in, first out basis by the date received.

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Section 8. REFUNDS

A. Refund for Failure to Construct or Provide Service

1. The current owner of record of property on which an impact fee has been paid shall be entitled to a refund of the fee if the construction of the improvements for which the fee was paid are not completed and available to provide service **within seven (7) years** from the date of payment of the impact fee.
2. The current owner shall submit a written request for refund to the Impact Fees Administrator within one (1) year of the date giving rise to the right to claim a refund. Failure to make a written request within one (1) year shall constitute a waiver of the right to receive a refund.
 - a. The current owner shall provide evidence of ownership in the form of a deed or title report;
 - b. The Impact Fees Administrator shall make a written decision on the request for refund within thirty (30) days;
 - c. If a refund is due to the current owner of record, the City shall issue a refund payment within thirty (30) days of the written decision;
 - d. If the Impact Fees Administrator determines that a refund is not due, the current owner of the property may appeal the decision of the Impact Fees Administrator to the City's Environmental Planning Commission within thirty (30) days of the written decision;
 - e. The refund shall bear interest calculated from the date of collection of the impact fee to the date of refund as set forth in Section 56-8-3 NMSA, 1978; and
 - f. Refunds shall be made on a first in, first out basis by the date received. Prior to making a refund, the Impact Fees Administrator shall notify all eligible fee payers by certified mail of the opportunity to make application for a refund.
3. The Impact Fees Administrator shall review the impact fee revenues collected and expenditures made by service area seven **(7) years** following the effective date and annually thereafter. If revenues exceed expenditures by more than ten percent (10%), the City shall refund a pro rata share of the difference to the owner of record of each property for which an impact fee has been paid within the previous seven **(7) years** in the service area due a refund.

B. Refund of Excess Credits

1. If excess credits have not been utilized, the credit holder may request a refund of the excess credits, which refund shall not include interest.
2. Application for refund of excess credits must be made at least ninety (90) days prior to expiration of the excess credit. Failure to apply for refund within ninety (90) days prior to expiration shall constitute a waiver of the credit holders right to reimbursement.

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3. The Impact Fees Administrator shall refund excess credits on a first in, first out basis by the date received. Prior to making a refund of excess credits the Impact Fees Administrator shall notify all eligible excess creditholders by certified mail of the opportunity to redeem any excess credits.
4. The Impact Fees Administrator shall not be obligated to provide a refund of excess credits in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

C. Overpayment

A refund, without interest, will be made if it is determined by the Impact Fees Administrator that an overpayment of an impact fee has occurred. Refunds under this section shall not be made more than one (1) year after overpayment of the impact fee has been determined.

D. Underpayment

In the event the Impact Fees Administrator determines that an underpayment of an impact fee has occurred through error or misrepresentation by the feepayer, the Impact Fees Administrator may revoke inspections or withhold the issuance of any building permit or certificate of occupancy, or shall have the power to sue in law or equity as may be provided by law for relief in civil court to enforce the correct payment of the fee.

Section 9. EXEMPTIONS

A. Must Be Claimed by Feepayers

An exemption must be claimed by the feepayer no later than 30 days prior to the time of application for a building permit. Any exemption not so claimed shall be deemed waived by the feepayer. Applicants whose requests for exemptions from an impact fee are rejected may appeal the decision within thirty (30) days of the decision as outlined in the applicable Impact Fee Ordinance.

B. Total Exemptions

1. The following shall be exempted from payment of all impact fees:
 - a. Alteration of an existing building or use of land where the existing use of the property is not changed and there is no additional enclosed or open area in non-residential structures.
 - b. The construction of accessory or auxiliary buildings or structures incidental to a dwelling unit on a residential property.
 - c. Replacement of a lawfully permitted building, mobile home, recreational vehicle, trailer or structure with a new unit, building or structure of the same type, use and size. If the existing unit, building, or structure is torn down, destroyed by fire or other natural disaster, or otherwise eliminated or moved off the site, or if the original structure is

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converted to a utility building, garage, or other non-residential or non-commercial use the replacement structure will be exempt from the payment of an impact fee. The permit applicant shall document such replacement.

- d. An amendment to a development approval provided that the amended development approval does not increase the number of service units.
2. In applying for the above-mentioned exemptions, it shall be the applicant's responsibility to furnish, as required by the Impact Fees Administrator, all materials and information necessary to validate the exemption which may include the following:
- a. Current survey of the property by a registered professional licensed surveyor;
 - b. Old and new construction plans;
 - c. Official certificate of occupancy;
 - d. Certified statements from owner stating past and proposed land use;
 - e. Utility bills or receipts; and
 - f. Property tax records.

C. Exemption Based on Error or Misrepresentation

Exemptions from payment of an impact fee based on error or misrepresentation by the feepayer shall be subject to the provisions found in Section 8.D. of these Rules.

D. Building Permit Applications Deemed Complete

Applications for building permits, which have been filed and deemed complete prior to July 1, 2005, shall not be subject to an impact fee. All other fees shall be applicable to the issuance of building permits.

Section 10. CREDITS

A. General Conditions

An applicant may obtain credit for up to 100% of an impact fee otherwise due or to become due by offering to dedicate land, contribute cash, and/or construct improvements for City CCIP projects. Applicants shall file an Impact Fee Credit Application, Exhibit C, with the Impact Fees Administrator. Any application for credit must be made and determined prior to the time of application for a building permit or issuance of a work order. Any claim not so made shall be deemed waived. Excess credits shall only be granted for the same category of system improvements and within the same service area for which the impact fee was imposed. The authority to determine credit lies exclusively with the Impact Fees Administrator. In every case impact fee credits shall be calculated so as to be consistent with Section 5-8-15 NMSA, 1978.

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1. Credits may be granted subject to the following conditions:
 - a. Impact fee credits will not be authorized until they are memorialized in a Development Agreement between the City and the Developer for Impact Fee Credits;
 - b. Payments made or construction of system or off-site improvements between July 1, 2002 and July 1, 2005, provided the system or off-site improvements are on the City CCIP;
 - c. Payments made or construction of system improvements after June 10, 2005, provided the system improvements are on the City CCIP;
 - d. Credits shall only be granted for the value of system improvements listed on the City CCIP, including the value of any system studies;
 - e. For CCIP roadway facility projects, dedicated ROW in excess of 86 feet (more than 43 feet dedicated on either side of the center line) is eligible for CCIP credit;
 - f. Credits shall only become effective in the year the project appears on the City's CCIP;
 - g. Credits shall be applied first to offset the impact fee otherwise due for the development project for which the credit was granted; and
 - h. Upon approval of the impact fee credit application by the Impact Fees Administrator, the Impact Fees Administrator shall issue a certificate of credit to the applicant in the form attached as Exhibit J.
2. No credit shall be given for:
 - a. Private improvements;
 - b. Project improvements (as defined by the Development Fees Act and the Impact Fee Ordinances). For CCIP roadway facility projects, roadway construction in excess of the project improvements required by the city development process is eligible for impact fee credit. Lanes eligible for impact fee credit will be confirmed by the Impact Fees Administrator prior to the execution of the Development Agreement for Impact Fee Credit.
 - c. System improvements (as defined by the Development Fees Act and the Impact Fee Ordinance) that are not accepted by the City; and
 - d. Construction of improvements or conveyance of land for which consideration has previously been given by a governmental body.

B. General Documentation and Procedures

An offer to make a payment, construct capital improvements or dedicate land in lieu of paying the impact fee shall be made in an application filed with the Impact Fees Administrator identifying the

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capital improvement and/or land dedication for which credits are requested. If the City of Albuquerque accepts such an offer, whether the acceptance is before or after the effective date of the appropriate Impact Fee Ordinance, the credit shall be determined and provided in the following manner:

1. **Amount of credit requested.** The applicant shall specify the dollar amount of the credit requested. The costs claimed by the applicant as the basis for the credit requested shall be no more than the actual costs or the fair market value as determined by the Impact Fees Administrator.
2. **Documentation.** It is the obligation of the applicant to submit written determination, to the satisfaction of the Impact Fees Administrator, that supports the amount of the credit requested and indicates the basis on which the amount requested was calculated.

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3. **Submittals for construction credits.** Prior to site plan, preliminary plat or Work Order approval, the applicant shall enter into a Development Agreement for Credits, in the form attached as Exhibit F, with the City as a condition for the granting of the credits. The Development Agreement for Credits shall establish:
 - a. The value of the credits;
 - b. The method by which the credits shall be valued;
 - c. A requirement that the improvement be completed to applicable City standards;
 - d. A construction completion deadline for the improvements;
 - e. Public liability insurance of at least \$1,000,000 per occurrence for which the City is an additional insured; and
 - f. A labor and material payment bond and a performance and warranty bond in favor of the City.
4. An applicant claiming credit for the construction of eligible system improvements and/or land dedication shall procure a City approved Work Order and provide the following information to the Impact Fees Administrator during development review or prior to application for the issuance of building permits:
 - a. **Construction of system improvements.** The credit applicant shall submit a project description in sufficient detail with an engineer's cost estimate prepared by a professional engineer, to allow the Impact Fees Administrator to verify the cost estimates. The engineer's estimate shall include:
 - i. Construction costs including NM gross receipts tax;
 - ii. Design costs;
 - iii. Land acquisition costs;
 - iv. Testing, survey and inspection costs; and
 - v. In no case shall the cost for design, engineering, testing, surveying, inspections, and overhead constitute more than 17% of the construction credit granted.
 - b. **Land dedication.** A credit applicant requesting credit for land dedication for approved improvements, shall present the following, as applicable:
 - i. An approved subdivision plat;
 - ii. A warranty deed to convey title to the appropriate governmental body;
 - iii. A title policy issued by a title insurance company in good standing and authorized to do business in New Mexico;

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- iv. A certified copy of the most recent assessment of the property for tax purposes;
 - v. A certified statement from the county treasurer certifying that all property taxes are current and paid;
 - vi. A property appraisal prepared by qualified professionals approved by the City. In preparing their reports, appraisers shall value the land prior to any increase in value resulting from the development approval; and
 - vii. Confirmation that the land to be dedicated is included in the City's CCIP.
5. **Change orders.** No increase in the amount of approved credit will be authorized unless it is determined during actual construction of the agreed-to improvements that change orders are to be made incurring additional expense for items that are necessary and are not shown on the approved plans and estimates previously furnished to the Impact Fees Administrator. It shall be the feepayer's responsibility to obtain prior approval from the Impact Fees Administrator before all such change orders are made. All requests for an increase of the approved credit shall include all documentation required by the Impact Fees Administrator.
6. **Acceptance of construction for credit.** Credit against the impact fee otherwise due will not be provided until:
- a. The construction is completed and accepted by the City as shown by a certificate of completion and acceptance signed by the City Engineer;
 - b. As-built record drawings are submitted to the City and certified by a New Mexico registered engineer;
 - c. A suitable performance, maintenance or warranty bond or irrevocable letter of credit is submitted to and approved by the City Attorney; or
 - d. In the case of 6.f. below, upon completion of the agreed-to construction improvements and upon acceptance by the appropriate governmental authority pursuant to 6.a. above, the bond may be reduced to an amount and a time period as provided for by the City to cover a maintenance period for the improvements;
 - e. All design, construction, inspection, testing, bonding and acceptance procedures are in strict compliance with the then-current City ordinances and policies, as they may be applicable; and
 - f. Credit may be provided before completion of specified improvements if the feepayer posts a financial guaranty for the costs of such construction in the form of an irrevocable letter of credit to be posted with the City in an amount determined by the Impact Fees Administrator equal to 125% of the full cost of construction. In the event of cancellation of the financial guaranty, notice of intent to cancel or not to renew must be given to the Impact Fees Administrator no later than sixty (60) days prior to the renewal date. In such event of a notice to cancel or of intent not to renew, the Impact Fees Administrator shall be entitled to declare a default and collect the full amount of the financial guaranty. The financial guaranty shall be in the form attached as Exhibit G.

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If the construction project will not be completed within two (2) years of the execution date of the Development Agreement for Impact Fee Credits, the amount of the financial guaranty shall be increased by 10% compounded for each year of the life of the financial guaranty. The financial guaranty shall be reviewed and approved by the City Attorney prior to acceptance of the financial guaranty by the City.

In the event that: (1) the City receives notification from the guarantor that the financial guaranty is being canceled before all agreed-to improvements have been completed and accepted by the appropriate governmental body; or (2) the City determines that terms of the agreement for construction as set forth in the financial guaranty are not being complied with, then the City shall, in accordance with the terms of the financial guaranty, make demand on the financial guaranty and collect the full amount of the financial guaranty to be used for completion of the agreed-to improvements and other expenses. If the cost incurred by the City to complete the improvements exceeds the amount received from the financial guaranty, the City shall have the right to sue in law or equity to recover the difference.

7. **Acceptance of land dedication for credit.** Credits for land dedication shall be granted when the following procedures have been completed and title to land has been delivered and accepted by the appropriate governmental body and recorded in the Bernalillo County Clerk's Office.
 - a. The delivery to the Impact Fees Administrator of a deed, with sufficient funds to pay all costs of transfer of title, including the recording of a subdivision plat if required;
 - b. The escrow or payment of taxes prorated to the date of closing; and
 - c. The issuance of a title insurance policy subsequent to recording of the deed and escrow of taxes.
8. **Transferability of credits.** Impact fee credits may be transferable from one project or development to another if provided for in the Development Agreement for Impact Fee Credits with the City of Albuquerque.
9. **Withdrawal of offer by applicant.** Any person who offers land and/or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the execution of the Development Agreement and pay the full impact fee required by the appropriate Impact Fee Ordinance.
10. **The value of credits granted for approved construction will be established by the Impact Fees Administrator** and will be based on actual construction costs as defined and approved in the City's Work Order Close-Out Process. Should the developer request credits in advance of the actual construction of the improvements and post a financial guarantee to secure 125% of the estimated value of the credits, **the Impact Fees Administrator will review the actual construction costs to ensure the value of the work meets or exceeds credits granted.** The Agreement and Financial Guarantee will be released once the work has been accepted by the City and the **value of credits has been confirmed by the Impact Fees Administrator.** Should the value of the work established through the City's Work Order Close-Out Process exceed the value of the estimated credits granted, the developer may request an increase in credits granted for a project from the Impact Fees Administrator.

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Should the value of the work established through the City's Work Order Close-Out Process be less than the value of the estimated credits granted, the Impact Fees Administrator shall, at his option, be able to directly draw from the financial guarantee for the difference in those amounts.

C. Excess Credits

1. If the value of the credits exceeds the amount of impact fee otherwise due, the applicant shall be entitled to excess credits and the **Impact Fees Administrator shall issue a Certificate of Excess Credits** in the form attached as Exhibit D to the applicant. The Certificate of Excess Credits shall state:
 - a. Dollar amount of the excess credits;
 - b. The system improvement category;
 - c. Service area to which the excess credits may be applied;
 - d. Name of the applicant as the original credit holder;
 - e. Description of the Component Capital Improvement Plan Project for which the excess credits were granted; and
 - f. The year(s) in which the excess credits may be applied.

The Certificate of Excess Credits shall be dated, executed and notarized by the Impact Fees Administrator and the applicant.

2. Excess credits shall only be applied for the same category of system improvements and within the same service area for which the impact fee was imposed.
3. Excess credit and credits shall be freely assignable provided notice to Impact Fees Administrator is provided prior to the assignment. The Notice of Assignment of Credits to the Impact Fees Administrator shall be in the form attached as Exhibit H.
4. Excess credits shall not accrue interest.
5. The Impact Fees Administrator shall upon request of the excess credit-holder reimburse excess credits on a first in, first out basis. The Request for Reimbursement of Excess Credits shall be in the form attached as Exhibit I. The Impact Fees Administrator shall not be obligated to provide reimbursement in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.
6. Excess credits must be used or redeemed within seven (7) years of the effective date of the excess credits. Excess credits not used or redeemed within seven (7) years of the effective date shall expire.

Section 11. WAIVERS AND REDUCTIONS

A. Affordable Housing

1. Ownership Housing

- a. Definition of affordable: On the first working day of each fiscal year, the Department of Family and Community Services, or its successor department, shall issue a determination of housing affordability based on the purchase price of a home. An affordable purchase price will be defined as what is affordable for a hypothetical household of four persons at 80% of Median Family Income (MFI), adjusted for family size as determined by the U.S. Department of Housing and Urban Development, if that household spends 30% of household income on housing costs and assumes a conventional mortgage at the Freddie Mac 30 year mortgage annual percentage rate published in the week prior to July 1.
- b. Impact fees shall be waived completely on building permits for new housing units, that meet the definition of affordability, after the fee waiver, and are located in Metropolitan Redevelopment Areas, Planned Village Development Zones and Infill Development Zones.
- c. In mixed income projects, 60% of the impact fees will be waived for affordable units that are located outside of the areas where impact fees are waived completely. In determining whether a development qualifies as a mixed-income project under R-04-159, the percentage of units that meet the definition of affordable, after the fee waiver, is at least 20% and not more than 50% of the total number of units in the development and also where at least 50% of the units have a sales price that is above the determination of housing affordability.
- d. Finalization of impact fee waivers for affordable housing will be contingent upon an approved certification by the City of Albuquerque that documents the unit was purchased by an income qualified buyer at a price that does not exceed the determination of housing affordability and before closing can provide documentation that the loan is structured in such a way that the buyer is not making monthly payments greater than of their household income. Documentation of purchaser income will be completed by the mortgage lender on forms provided by the City and approved by the Department of Family and Community Services.
- e. A deed restriction, or another mechanism for the amount of the waived impact fee, will be placed on the property when the developer can provide an executed purchase agreement for a house price that falls within what has been defined as affordable. Before closing on the property, the mortgage lender will provide documentation to the Department of Family and Community Services that the buyer is at or below 80% of MFI and is not paying more than 30% of their household income on the first mortgage. Once the City has reviewed and approved this documentation, the deed restriction or other mechanism will be released five years (5) after the closing date. If the buyer cannot be shown to meet the income guidelines defining affordability, the developer will be responsible for paying the impact fees to the City in order to release the deed restriction or other mechanism.

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2. Rental Housing

- a. Definition of affordable: On the first working day of each fiscal year, the Department of Family and Community Services or its successor department shall issue a determination of affordability for rental housing calculated on the monthly rental costs for a housing unit occupied by a household at 60% and 80% of MFI adjusted for family size, as determined by the U.S. Department of Housing and Urban Development, paying 30% of monthly income on housing costs. In making this calculation, household size shall be converted to number of bedrooms per rental unit as follows:

<i>Household Size</i>	<i>Bedrooms</i>
1 & 2 Persons	1
3 Persons	2
4 Persons	3
5 Persons	4

- b. Impact fees will be waived for rental housing only for those projects developed under an agreement with an agent of local, state, or federal government which requires that a specified number of units be available at affordable rents only to households at or below 60% of MFI for a period of no less than fifteen (15) years. The agreement must specify the income test used to identify renters that qualify for affordable units.
- c. Impact fees for mixed income projects in adopted centers and corridors shall be waived completely proportionate to the percentage of units affordable to households at or below 60% of MFI adjusted for household size. For mixed income projects not located in adopted centers and corridors, 60% of impact fees will be waived proportionate to the percentage of units affordable to households at or below 60% of MFI adjusted for household size. To qualify for a waiver of impact fees for a mixed income project, the affordable units (at 60% MFI) must be at least 20% and not more than 40% of all units in the project. In addition, the agreement must specify that at least 30% of the units will be at rents at or above the determination of affordability for households at 80% MFI adjusted for family size.
- d. For rental projects that are not part of a mixed-income project, as defined in R-040-159, impact fees will be waived in proportion to the percentage of affordable units that will be reserved for households at or below 30% of MFI adjusted for family size.

B. FAA Jurisdiction

Any development under the jurisdiction of the Federal Aviation Administration Grant Assurances shall not be subject to an impact fee.

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C. Jobs - Housing Balance

For every new building developed for the following uses, the Roadway Facilities Impact Fee will be reduced in the SW Mesa, W Mesa and the NW Mesa service areas as follows:

Industrial or Manufacturing	70% reduction
Institutional	60% reduction
Office	50% reduction
Lodging, Retail, or Quality Restaurant*	30% reduction

*A quality restaurant is a high quality, full-service eating establishment with turnover rates usually of at least one hour or longer. Quality restaurants generally do not serve breakfast; some do not serve lunch; all serve dinner. This type of restaurant usually requires reservations and is generally not part of a chain.

D. Development in Metropolitan Redevelopment Areas

Nonresidential development within Metropolitan Redevelopment Areas (MRA) that conforms to the MRA and any sector development or area plan applicable within the MRA shall no be subject to impact fees.

E. Economic Development

Development that has received City Council approval for or subject to Industrial Revenue bonds, Metropolitan Redevelopment Bonds, or the local Economic Development Act (Section 5-10-1 *et seq.* NMSA, 1978), where an economic impact analysis has been conducted that indicates a positive economic impact on the City shall not be subject to an impact fee.

Section 12. AMENDMENTS

All additions or changes to these Administrative Rules shall be subject to review and approval pursuant to the Development Process Manual process as agenda items during the regular meetings of the Development Process Manual Executive Committee. Copies of these Administrative Rules as revised and approved by the Mayor shall be made available to all City Staff who administer impact fees and shall be made available to members of the general public, upon request, at designated locations in the City of Albuquerque.

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EXHIBIT A

CITY OF ALBUQUERQUE

[RESERVED]