

ORDINANCE NO. 5189

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, FOR THE CONTINUATION OF THE CITY'S EXISTING DEVELOPMENT IMPACT FEES AS PERMITTED IN A.R.S. § 9-463.05, ADOPTING THE PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES, AND AMENDING VARIOUS SECTIONS OF THE MESA CITY CODE TITLE 5 BUSINESS REGULATIONS, CHAPTER 17, DEVELOPMENT IMPACT FEES IN COMPLIANCE WITH A.R.S. § 9-463.05. PENALTIES AS ESTABLISHED IN SECTION 5-17-11.

WHEREAS, the City Council of the City of Mesa approved the Impact Fee Study for the City of Mesa, Arizona, dated May 14, 2007, (the "Impact Fee Study") and adopted its current Development Impact Fees Ordinance on June 4, 2007; and

WHEREAS, the Impact Fee Study contained the City Council's determination of which capital projects were "necessary public services" for the purpose of the State of Arizona's development impact fee statutes; and

WHEREAS, the Impact Fee Study and Mesa City Code 5-17-7(C)(2) indicated the City's intent to use impact fees to retire debt service to pay for a portion of the costs for construction and equipping certain necessary public services, including Water, Wastewater, Parks, Library, Fire, Public Safety, and Storm Water projects. The resulting Development Impact Fees were then used for the repayment of bonds, notes or other debt service obligations issued to pay the aforementioned costs. These Development Impact Fees have been lawfully collected and applied to such debt service accordingly; and

WHEREAS, the City's annual budgets have included use of Impact Fee funds to pay debt service as outlined in the Impact Fee Study and the City Council has approved such annual budgets for necessary public services based on the Impact Fee funds being used to pay all or a portion of such debt service; and

WHEREAS, Senate Bill 1525, approved by the Fiftieth Arizona Legislature, First Regular Session, on April 19, 2011 and signed into law by the Governor on April 26, 2011 ("SB 1525"), included changes to the Development Fee Statutes; and

WHEREAS, the City Council in Ordinance 5071 ended the collection of general government and cultural facilities Development Impact Fees as of January 1, 2012 in compliance with SB 1525, and the City's other Development Impact Fees (water, wastewater, parks, library, fire, public safety, and storm water) continued; and

WHEREAS, the City retained Duncan-Associates to comply with SB 1525 in adopting or continuing its Development Impact Fees, and Duncan-Associates has prepared the *Pledged Debt Analysis for Continuation of Impact Fees* for the City of Mesa, Arizona, dated April 16, 2013 (the "Pledged Debt Analysis for Continuation of Impact Fees"), which sets forth the City's ability to continue its existing impact fees to repay such debt amounts as authorized by SB 1525; and

WHEREAS, the City hereby adopts the Pledged Debt Analysis for Continuation of Impact Fees; and

WHEREAS, the City has pledged, and hereby again pledges, to use its impact fees to repay debt amounts, as further explained in the Pledged Debt Analysis for Continuation of Impact Fees and as permitted by SB 1525; and

WHEREAS, the City hereby elects to continue its existing Development Impact Fees at the same rates currently assessed to repay debt amounts as permitted by SB 1525 (A.R.S. § 9-463.05(R)); and

WHEREAS, upon the City receiving Development Impact Fees in an amount equal to the amount of such debt for a particular impact fee category, the Development Impact Fee for such impact fee category shall automatically cease as further described in this Ordinance; and

WHEREAS, the City also desires through this Ordinance to amend certain portions of the Mesa City Code relating to Development Impact Fees as set forth herein.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Text written in **BOLD ALL CAPS** indicates new language.
~~Strikethrough~~ fonts indicate deletions.

SECTION 1. That Section 5-17-1 of the Mesa City Code, entitled Findings and Purpose, is hereby amended by amending Subsections (I) through (N) as follows:

(I) **THE PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES, AS DEFINED HEREIN, SETS FORTH THE BASIS AND ANALYSIS FOR THE CONTINUATION OF THE CITY'S CURRENT IMPACT FEES (AS DETERMINED IN THE IMPACT FEE STUDY) FOR WATER, WASTEWATER, PARKS, LIBRARY, FIRE, PUBLIC SAFETY AND STORM WATER FACILITIES UNTIL SUFFICIENT FUNDS HAVE BEEN COLLECTED TO REPAY ALL OF THE DEBT AMOUNTS FOR WHICH THE FEES WERE PLEDGED, AS AUTHORIZED BY SB 1525, FIFTIETH LEGISLATURE, FIRST REGULAR SESSION (2011).**

~~(J)~~(J) The impact fees described in this Chapter are based on the Impact Fee Study **AND THE PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES.** ~~and do not exceed the costs of acquiring additional land and the costs of acquiring or constructing additional facilities or equipment required to serve the new developments that will pay the impact fees.~~

~~(K)~~(K) The types of improvements to each type of public facility considered in the Impact Fee Study **AND THE PLEDGED DEBT ANALYSIS** will benefit all new development in the City, and it is therefore appropriate to treat the entire City as a single service area for purposes of assessing, collecting, and expending the impact fees for each type of facilities.

~~(L)~~(L) There is both a rational nexus and a rough proportionality between the development impacts created by each type of new development covered by this Chapter and the impact fees that each such development will be required to pay.

~~(M)~~(M) **THIS CHAPTER ALLOWS FOR THE CONTINUATION OF DEVELOPMENT IMPACT FEES THAT THE CITY ADOPTED PRIOR TO JANUARY 1, 2012, AND THAT WERE, AND HEREBY ARE AGAIN, PLEDGED TO REPAY DEBT SERVICE OBLIGATIONS RELATED TO THE CONSTRUCTION OF IMPACT FEE ELIGIBLE FACILITIES FOR WATER, WASTEWATER, PARKS, LIBRARY, FIRE, PUBLIC SAFETY AND STORM WATER FACILITIES AS ALLOWED BY ARIZONA REVISED STATUTES ("A.R.S.") § 9-463.05.** ~~This Chapter creates a system by which impact fees paid by new developments will be used to expand the type of public facility for which the impact fee was paid, so that the new development that pays each impact fee will receive a corresponding benefit within a reasonable period of time after the impact fee is paid.~~

~~(M)(N)~~This Chapter creates a system under which OF impact fees IN COMPLIANCE WITH THE REQUIREMENTS OF A.R.S. § 9-463.05. ~~shall not be used to cure existing deficiencies in public facilities.~~

SECTION 2. That Section 5-17-2 of the Mesa City Code, entitled Authority and Applicability, is hereby amended as follows:

- (A) This Chapter is enacted pursuant to the City's general police power, the authority granted to the City by the Arizona State Constitution, and ~~Section A.R.S. § 9-463.05 of Arizona Revised Statutes.~~
- (B) The provisions of this Chapter shall apply to all of the territory within the corporate limits of the City, and within the City's water and wastewater service areas.
- (C) The eCity mManager or his designee is authorized to make determinations regarding the application, administration and enforcement of this eChapter. **THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT OF THIS CHAPTER SHALL COMPLY WITH ANY APPLICABLE REQUIREMENTS OF A.R.S. § 9-463.05.**

SECTION 3. That Section 5-17-3 of the Mesa City Code, entitled Intent, is hereby amended as follows:

- (A) The intent of this Chapter is to ensure that new development bears a proportionate share of the cost of improvements to the City's water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems **AS ALLOWED BY THE ARIZONA STATE CONSTITUTION AND A.R.S. § 9-463.05.** ~~to ensure that the proportionate share for each type of public facility does not exceed the cost of providing that type of public facility to the new development that paid the impact fee; and to ensure that funds collected from new developments are actually used to construct public facilities that benefit such new developments.~~
- (B) **THIS CHAPTER PROVIDES FOR THE CONTINUATION OF DEVELOPMENT IMPACT FEES (ADOPTED BY THE CITY PRIOR TO JANUARY 1, 2012) FOR WATER, WASTEWATER, PARKS, LIBRARY, FIRE, PUBLIC SAFETY AND STORM WATER FACILITIES UNTIL SUFFICIENT FUNDS HAVE BEEN COLLECTED TO REPAY ALL OF THE DEBT AMOUNTS FOR WHICH THE FEES WERE PLEDGED AS IDENTIFIED IN THE PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES, AT SUCH TIME, THE COLLECTION OF THE IMPACT FEE FOR SUCH IMPACT FEE CATEGORY (EACH IMPACT FEE CATEGORY BEING TREATED SEPARATELY) SHALL AUTOMATICALLY CEASE UNTIL A NEW OR UPDATED DEVELOPMENT IMPACT FEE IS ADOPTED IN COMPLIANCE WITH A.R.S. § 9-463.05. It is not the intent of this Chapter to collect any money from any new development in excess of the actual amount necessary to offset demands generated by that new development for the type of public facility for which the impact fee was paid.**
- (C) It is not the intent of this Chapter that any monies collected from any impact fee and deposited in an impact fee fund shall ever be commingled with monies from a different impact fee fund or ever be used for a type of public facility different from that for which the impact fee was paid.

SECTION 4. That Section 5-17-4 of the Mesa City Code, entitled Definitions, is hereby amended by amending the definitions of "BUILDING AREA," "CHANGE IN USE," "HOTEL/MOTEL," "LOT," "MULTI-RESIDENCE DWELLING," "NON-RESIDENTIAL," AND "PERSON" and adding a definition for "PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES" as follows (and leaving all other definitions and language in 5-17-4 unchanged with omission herein shown by * * *):

* * *

BUILDING AREA: For fees assessed on the basis of square feet, building area shall be calculated as follows:

Building area shall include all areas within the surrounding exterior walls, measured to the outside of such walls, exclusive of vent shafts and courts. Building area shall also include areas of buildings within the horizontal projection of the roof or floor above, which do not have surrounding exterior walls but exceed three feet (3') in horizontal dimension. Building area shall also include basements, if provided, and outdoor patios without roofs for restaurants, bars or similar occupancies (per TITLE 4, CHAPTER 2 OF THE MESA CITY CODE Chapter 4-2).

CHANGE IN USE: A development ~~which~~ THAT modifies the housing type, meter size, or land use type applicable to the lot.

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~~HOTEL/MOTEL: As defined in Section 11-1-6 of the Mesa City Code.~~ A FACILITY CONTAINING 6 OR MORE COMMERCIAL GUEST ROOMS UTILIZED FOR SHORT TERM TRANSIENT OCCUPANCY WHICH PROVIDES CONTINUOUS ON-SITE MANAGEMENT. THE TERM SHALL INCLUDE THOSE FACILITIES SUBJECT TO THE TRANSIENT LODGING TAX PROVIDED IN SECTIONS 5-10-444 AND 5-10-447 OF THE MESA CITY CODE, BUT SHALL NOT INCLUDE NURSING OR CONVALESCENT HOMES, BOARDING HOUSES, BED AND BREAKFAST ESTABLISHMENTS, OR APARTMENT BUILDINGS.

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~~LOT: As defined in Section 11-1-6 of the Mesa City Code.~~ A PIECE OR PARCEL OF LAND SEPARATED FROM OTHER PIECES OR PARCELS BY DESCRIPTION, AS IN A SUBDIVISION OR ON A RECORDED SURVEY MAP, OR BY METES AND BOUNDS, FOR PURPOSES OF SALE, LEASE OR SEPARATE USE.

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MULTI-RESIDENCE DWELLING: A dwelling unit in a building containing two (2) or more dwelling units, including units that are situated over one another, ~~which are located within a Multiple Residence zoning district as outlined in Chapter 5, Title 11, Mesa City Code.~~

NON-RESIDENTIAL: All land uses (WHICH INCLUDES COMMERCIAL AND INDUSTRIAL), except single residence detached dwellings, single residence attached dwellings, multi-residence dwellings, manufactured homes, recreational vehicles or similar uses.

PERSON: Any person, partnership, firm, company, LIMITED LIABILITY ENTITY or corporation.

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PLEGGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES: THE PLEGGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES FOR THE CITY OF MESA, ARIZONA PREPARED BY DUNCAN-ASSOCIATES DATED APRIL 16, 2013.

SECTION 5. That Section 5-17-5 of the Mesa City Code, entitled Imposition of Impact Fees, is hereby amended by changing references to the "Building Safety Director" to the "City Manager, or his designee" in Subsection (C)(1) through (C)(3) as follows (and not making any other changes to 5-17-5):

(C) Calculation of Impact Fees from Impact Fee Tables.

1. The ~~Building Safety Director~~ CITY MANAGER, OR HIS DESIGNEE, shall determine the amount

of each required impact fee through the use of the impact fee table set forth in this Chapter.

2. Land Use Type. The ~~Building Safety Director~~ **CITY MANAGER, OR HIS DESIGNEE**, shall determine the land use type for each development based on the land use or land uses applicable to the lot to be developed in its entirety. If a lot consists of two (2) or more separate areas with different land uses applicable to each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each land use type in each separate area. Determinations of the land use type by the Building Safety Director may be appealed to the City Manager or his designee.
3. Meter Size. The ~~Building Safety Director~~ **CITY MANAGER, OR HIS DESIGNEE**, shall determine the meter size for each lot based on the actual meter size installed on each lot. If the exact meter size is not listed in a table, then the City shall use the next largest meter size in such table. If a lot consists of two (2) or more separate areas with separate meters in each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each meter size in each separate area.

SECTION 6. That Section 5-17-6 of the Mesa City Code, entitled Exemptions from Impact Fees, is hereby amended as follows:

- (A) General Exemptions. The following types of development shall be exempt from payment of specified impact fees otherwise due pursuant to this Chapter. Except for claim(s) resulting from unforeseen conditions, the ~~Building Safety Director~~ **CITY MANAGER, OR HIS DESIGNEE**, shall evaluate every permit application for applicability of the exemption criteria as follows:
 1. Facilities located within the City and owned by the City ~~shall~~ **WILL** be exempt from payment of all impact fees **IF THE PROPOSED FACILITY WILL PRODUCE NO ADDITIONAL DEMAND FOR A SPECIFIC NECESSARY PUBLIC SERVICE. THE CITY MANAGER, OR HIS DESIGNEE, WILL EVALUATE SUCH PROPOSED FACILITIES FOR APPLICABILITY OF THE DEMONSTRATION OF NO ADDITIONAL DEMAND PURSUANT TO THIS CHAPTER.**
 2. Public schools, **SCHOOL DISTRICTS** and Charter Schools located within Mesa shall be exempt from payment of all impact fees in accordance with Arizona Revised Statutes, Section 9-500.18, except applicable water and wastewater impact fees.
 3. Water and wastewater impact fees shall not be charged for the installation of fire protection systems or lines, provided that such system or line is not served by a water meter.
 4. Separate water meters installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee.
 5. Separate water meters installed for irrigation purposes only that meet one (1) of the following conditions shall not be included in the calculation of the water impact fee:
 - (a) Dwelling units for which applicable impact fees were assessed and paid on a dwelling-unit basis; or
 - (b) Dwelling units for which first connection preceded the assessment of development fees; or
 - (c) Residential subdivision developments where water meters are installed in common areas of said developments to provide landscape irrigation; or
 - (d) Commercial or industrial developments for which water development fees were assessed and paid prior to July 1, 1993; or

- (e) Commercial or industrial developments for which first connection preceded the assessment of development fees.
6. Separate water meters installed in a residential subdivision development that is:
 - (a) Used for common amenities (i.e., swimming pools, clubhouses, recreation buildings, etc.) and
 - (b) Solely dedicated for the noncommercial use of the subdivision residents shall not be included in the calculation of the water impact fees when applicable impact fees for dwelling units were assessed and paid on a dwelling/unit or space/lot basis.
 7. A development shall be exempt from stormwater drainage impact fees if the development is located within the areas of the "Stormwater Drainage Impact Fee Map" designated EITHER AS "exempt" OR "POTENTIALLY EXEMPT" from stormwater drainage impact fees.
 - ~~8. A development may be exempt from stormwater drainage impact fees if the development is located within the areas of the "Stormwater Drainage Impact Fee Map" designated as "potentially exempt" as determined by the Building Safety Director, provided: the development is not constructing a new or wider section or mid-section public street adjacent to or adjoining said development wherein new and/or additional stormwater runoff is being directed into facilities that are, or will be, maintained by the City of Mesa; and the development, by its hydrologic design, is not creating the need for construction of stormwater drainage facilities, beyond the lot boundaries of such development, to accommodate the transmission of historic stormwater flows through said development. Determinations of exemptions under this section by the Building Safety Director may be appealed to the City Manager or his designee.~~
 - (B) Demonstration of No Additional Demand for Facilities. A development may be exempted from payment of specific impact fees otherwise due pursuant to this Chapter if the proposed development will produce no additional demand for a specific key public facility than **WHAT WAS** ~~were~~ generated from such lot or location prior to the proposed development. The ~~Building Safety Director~~ **CITY MANAGER, OR HIS DESIGNEE**, shall evaluate every permit application for applicability of the demonstration of no additional demand for facilities for the types of impact fees pursuant to this Chapter.
 - (C) Exemption Determination. The City Manager, or his designee, shall determine the validity of any claim for exemption pursuant to the criteria set forth in this Section.

SECTION 7. That Section 5-17-7 of the Mesa City Code, entitled Impact Fee Funds, is hereby amended as follows:

- (A) Creation of Impact Fee Funds. The following impact fee funds are hereby created as interest-bearing ~~account~~ **ACCOUNTS SEPARATE AND** distinct from the general fund of the City:-
 1. Water Impact Fee Fund. ~~designated as "022";~~
 2. Wastewater Impact Fee Fund. ~~designated as "023";~~
 3. Park Impact Fee Fund. ~~designated as "453";~~
 4. (RESERVED)
 5. Library Impact Fee Fund. ~~designated as "455";~~
 6. Fire Impact Fee Fund. ~~designated as "452";~~

7. ~~Public Safety POLICE Impact Fee Fund. —designated as “451.”~~

8. (RESERVED)

9. ~~Stormwater Drainage Impact Fee Fund. —designated as “456.”~~

(B) Each such impact fee fund shall contain only those impact fees collected pursuant to this Chapter for the types of key public facilities reflected in the title of the fund plus any interest which may accrue from time to time on such amounts.

(C) The monies in each impact fee fund shall be used only:

~~1. To acquire land for and/or acquire or construct key public facilities of the type reflected in the title of the fund and purchase capital equipment similar to that utilized in the fee calculations in the Impact Fee Study;~~

~~2. 1. To REPAY ALL OF THE DEBT AMOUNTS FOR WHICH THE FEES HAVE BEEN PLEDGED AS DESCRIBED IN THE PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES; pay debt service on any portion of any current or future general obligation bond issue or revenue bond issue used to finance key public facilities of the type reflected in the title of the fund;~~

~~3. 2. As described in Section 5-17-8 (refunds); or~~

~~4. 3. As described in Section 5-17-9 (credits).~~

SECTION 8. That Section 5-17-8 of the Mesa City Code, entitled Refunds of Development Impact Fees Paid, is hereby amended as follows:

(A) The ~~Building Safety Director~~ **CITY MANAGER, OR HIS DESIGNEE**, is hereby authorized and directed to correct any error in the assessment and collection of impact fees detected within twenty-four months of the date of the payment of the impact fees, including assessing additional impact fee amounts or issuing a refund from the appropriate impact fee fund(s).

(B) If an applicant has paid an impact fee required by this Chapter and has obtained any of the types of permits listed in Section 5-17-5, and the permit for which the impact fee was paid later expires or is revoked, then the applicant who paid such impact fee shall be entitled to a refund of the impact fee paid; ~~without interest.~~ **A REFUND WILL INCLUDE INTEREST TO THE EXTENT REQUIRED BY A.R.S. § 9-463.05.** In order to be eligible to receive such refund, the applicant who paid such impact fee shall be required to submit a request for such refund within thirty (30) days after the expiration or revocation of the permit for which the impact fee was paid.

(C) After an impact fee has been paid pursuant to this Chapter, no refund of any part of such impact fee shall be made if the development for which the impact fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

SECTION 9. That Section 5-17-9 of the Mesa City Code, entitled Credits Against Impact Fees, is hereby amended as follows:

(A) Credits Against ~~Specific Types of~~ Impact Fees.

1. ~~Park~~ Impact Fee Credits. **THE CITY WILL PROVIDE A CREDIT TOWARD THE PAYMENT OF A DEVELOPMENT IMPACT FEE FOR A REQUIRED OR AGREED UPON DEDICATION OF PUBLIC SITES, IMPROVEMENTS AND OTHER NECESSARY PUBLIC SERVICES OR FACILITY EXPANSIONS INCLUDED IN THE CITY'S**

INFRASTRUCTURE IMPROVEMENT PLAN AND FOR WHICH THE FEE IS ASSESSED. THE CREDIT WILL BE PROVIDED TO THE EXTENT THE PUBLIC SITES, IMPROVEMENTS AND OTHER NECESSARY PUBLIC SERVICES OR FACILITY EXPANSIONS ARE PROVIDED BY THE DEVELOPER REQUESTING THE CREDITS. THE CITY WILL PROVIDE CREDITS OR REIMBURSEMENTS FROM DEVELOPMENT IMPACT FEES UNDER A.R.S. § 9-463.05(B)(7)(c)(i). THE CITY WILL PROVIDE CREDITS WHEN REQUIRED BY A.R.S. § 9-463.05. CREDITS WILL ONLY BE PROVIDED IF AND TO THE EXTENT SUCH CREDITS COMPLY WITH A.R.S. § 9-463.05. ~~Credits against the park impact fees may be granted only for improvements to the City's park system. Dedications, construction, or acquisitions of key public facilities that may qualify for credits include dedication of land, grading of land; provision of utilities; construction of drainage, access, parking, lighting, signage, and other improvements necessary to a functioning park; and construction or installation of recreational facilities. If approved, qualifying private improvements shall be limited to the costs of recreational facilities, such as tennis courts and ballfields, that are, in the opinion of Mesa's Parks and Recreation Division Director, the functional equivalent of facilities that are provided in City parks and that could reasonably be expected to reduce the need for City facilities. The credits for these recreational facilities shall not include the costs of land, nor shall they include the costs of improvements, such as utilities, access, and parking, not directly associated with the recreational facilities. The maximum amount of the credits shall be based on the unit costs for the same kind of recreational facilities included in the Impact Fee Study or an updated list of unit costs that may be prepared by Mesa's Parks and Recreation Division for this purpose.~~

2. ~~Over~~**OVERSIZED** Water and Wastewater Improvements. Credits shall not be issued for water and wastewater ~~oversize~~**OVERSIZED** improvements. ~~Over~~**OVERSIZED** improvements may be handled using development agreements as outlined in Sections 9-6-4(F) and 9-8-3(I) of the Mesa City Code.

~~(B) General Provision. After November 1, 1998, all mandatory or voluntary land dedications for key public facilities and all mandatory or voluntary acquisitions or constructions of key public facilities by an applicant in connection with a proposed development shall result in a credit against the impact fee for the same type of key public facility otherwise due for such development, except that no such credit shall be awarded for (1) land dedications for or acquisition or construction of site-related improvements, (2) voluntary land dedications not accepted by the City, (3) public utility and/or facility easements, or (4) voluntary acquisition or construction of key public facilities not approved in writing by the City prior to commencement of the acquisition or construction.~~

~~(C) Credit for Prior Actions. Applicants may also obtain credits for land dedications for key public facilities, or for acquisition or construction of key public facilities completed prior to November 1, 1998, and may use such credits to reduce the impact fees due after the effective date of this ordinance for key public facilities of the same type within the same development for which the credits were issued. Application for such credits must be made, on forms provided by the City, within two (2) years after the effective date of this Chapter. In the event that the development for which the credits are claimed is partially completed, the amount of the credits shall be reduced by the amount of the impact fees for the same type of key public facility that would have been charged for the completed portion of the development had the impact fee ordinance been in effect. In the event that the development has been fully completed, no credits shall be issued.~~

~~(D)~~**(B)** Procedure. In order to obtain a credit against an impact fee otherwise due, an applicant must submit a written offer to dedicate to the City specific parcels of qualifying land or to acquire or construct specific key public facilities in accordance with all applicable State or City design and construction standards, **IDENTIFY THE PROJECT IN THE CITY'S INFRASTRUCTURE IMPROVEMENT PLAN FOR WHICH THE CREDIT IS SOUGHT** and must specifically request a credit against such impact fee. Such written request must be made on a form provided by the City, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts, and must be filed not later than the time when an applicant applies for the first permit of a type listed in Section 5-17-5(A) that creates an obligation to pay the type of impact fee against which the credit is requested, or the applicant's claim for the credit shall be waived.

~~(E)~~(C) Calculation of Credit. The credit due to an applicant shall be calculated and documented as follows:

1. The value of land dedicated or donated shall, at the applicant's option, be valued at (a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) that fair market value based on the appraised land value of the parent parcel on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the City may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two (2) appraisals. If either party rejects the average of the two (2) appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the City. The third appraiser shall be selected by the first two (2) appraisers, and the third appraisal shall be binding on both parties. **CREDITS MAY NOT EXCEED THE COST IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENT PLAN FOR WHICH A DEVELOPMENT FEE WAS ASSESSED.**
2. In order to receive credit for qualifying acquisition or construction of **key ELIGIBLE** public facilities, the applicant shall ~~submit complete engineering drawings, specifications, and construction cost estimates to the City. The City shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the City. If the estimated credits are less than one hundred and twelve thousand dollars (\$112,000), the value of the credits will be determined using maximum unit costs based on current low bid results received on other projects through the City's public bidding process. If the estimated credits are one hundred and twelve thousand dollars (\$112,000) or more, the amount of the credit will be determined through the use of the City's~~ **COMPLY WITH THE** public bidding process as required by Section 5-17-9(JH) of the Mesa City Code. **CREDITS MAY NOT EXCEED THE COST IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENT PLAN FOR WHICH A DEVELOPMENT FEE WAS ASSESSED AND MAY NOT EXCEED THE ACTUAL COSTS THE APPLICANT INCURRED IN ACQUISITION OR CONSTRUCTION.**

~~(F)~~(D) Effective Date. Approved credits shall become effective at the following times:

1. Approved credits for land dedications shall become effective when the land has been conveyed to the City in a form acceptable to the City and at no cost to the City and has been accepted by the City. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available.
2. Approved credits for the acquisition or construction of key public facilities shall generally become effective when (1) all required construction has been completed and has been accepted by the City, (2) a suitable maintenance and warranty bond has been received and approved by the City, (3) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable City and State procedures. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available.

~~(G)~~(E) Credits Used for Same **IMPACT FEE CATEGORY**. ~~Type of Facility~~. Approved credits may be used only to reduce the amount of impact fees due from the applicant for the same ~~type of key public facility~~ **IMPACT FEE CATEGORY** for which the applicant dedicated land or acquired or constructed a key public facility until the amount of the credit is exhausted. Approved credits shall not be paid to the applicant in cash or in credits against any impact fee for a different type of ~~key public facility~~ **IMPACT FEE CATEGORY** or against any other monies due from the applicant to the City, and shall not constitute a liability of the City, except as described in Section 5-17-9(IG). Each time a request to use approved credits is presented to and approved by the City, the City shall reduce the amount of the applicable impact fee otherwise due from the applicant, and shall note in the City records the amount of credit remaining, if any. Upon request of the applicant, the City shall issue a letter stating the number of credits available.

~~(H)~~(F) Sale of the Development. In the event that the development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first. In the event that the impact fee tables are amended to increase the fees prior to completion of the development, the percentage reduction shall be applied only to the impact fees that were in place at the time the credits were issued, and the adjusted impact fee to be charged shall be the sum of the reduced original impact fee plus the amount by which the fees were increased.

~~(H)~~(G) ~~Nontransferable~~ **RIGHTS TO CREDITS. EXCEPT AS PROVIDED BELOW IN THIS SUBSECTION, THE** The right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the key public facility of the same type was acquired or constructed. Credits issued for a particular development shall not be transferable **OR ASSIGNABLE** to another development, ~~but may be~~ **EXCEPT THE CITY MAY AGREE TO A TRANSFER OR ASSIGNMENT AS ALLOWED IN A.R.S. § 9-463.05(B)(7)(c)(iii)** transferred within the same development provided the transfer of the credits is outlined in a signed development agreement between the City and the original developer.

~~(J)~~ ~~Cash Payments. If the amount of the credits exceeds the amount of impact fees otherwise due from the development, the applicant may request in writing that the City provide for reimbursement of any excess credits to the applicant in cash. Such written request must be filed not later than the time when an application is made for the first building permit required for the development, or the claim for the excess credit reimbursement shall be waived. Upon receipt of such written request, the City may, at its discretion, (1) arrange for the reimbursement of such excess credits from the appropriate impact fee fund, or (2) arrange for reimbursement of such excess credits through the issuance of a promissory note payable in not more than ten (10) years and bearing interest equal to the interest rate then earned by the City on its participation in the State Investment Pool. When the City chooses to arrange for reimbursement of excess credits from an impact fee fund, it will schedule the reimbursements as follows. If the total amount of the credit is less than one hundred and twelve thousand dollars (\$112,000), the City will issue a one time payment after all land dedications giving rise to the credit have been accepted by the City and all key public facilities giving rise to the credit have been given final acceptance by the City. If the total amount of the credit is more than one hundred and twelve thousand dollars (\$112,000), the City will make monthly progress payments based on the percentage completion of the key public improvements giving rise to the credits, with each payment being made only after review and approval of appropriate documentation of the construction.~~

~~(K)~~(H) Use of Public Bidding Process. If the estimated credits for acquisition or construction of key public improvements **IN ORDER TO RECEIVE A CREDIT FOR THE ACQUISITION OR CONSTRUCTION OF ELIGIBLE PUBLIC IMPROVEMENTS** (other than land dedication), from any one development exceed one hundred and twelve thousand dollars (\$112,000), the developer shall be required to **COMPLY WITH A.R.S. § 34-101 ET SEQ. AND THE CITY OF MESA'S PUBLIC BIDDING PROCESS AS ADMINISTERED BY THE CITY.** ~~offer all such key public improvements through the public bidding process as administered by the City, in order to receive a credit for such acquisition or construction.~~

~~(L)~~ Expiration. Credits provided for dedication of land or for acquisition or construction of key public facilities meeting the requirements of this Section shall be valid from the effective date of such credits until ten (10) years after such date or until the last date of construction within the development for which the credits were issued, whichever occurs first.

SECTION 10. That Section 5-17-10 of the Mesa City Code, entitled Miscellaneous Provisions, is hereby amended as follows:

- (A) Interest. Interest earned on monies in any impact fee fund shall be considered part of such fund, and shall be subject to the same restrictions on use applicable to the impact fees deposited in such fund.
- (B) First-In/First-Out Accounting. Monies in each impact fee fund shall be considered to be spent in the order collected, on a first-in/first-out basis.
- (C) Maintenance. Monies from any impact fee fund shall not be spent for periodic or routine maintenance of any facility of any type or to cure deficiencies in public facilities existing on November 1, 1998.
- (D) No Restriction on Development Conditions. Nothing in this Chapter shall restrict the City from requiring an applicant to construct reasonable project improvements required to serve the applicant's development, whether or not such improvements are of a type for which credits are available under Section 5-17-9.
- (E) Records. The City shall maintain accurate records of the impact fees paid, including the name of the person paying such impact fees, the development for which the impact fees were paid, the date of payment of each impact fee, the amounts received in payment for each impact fee, and any other matters that the City deems appropriate or necessary to the accurate accounting of such impact fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice.
- ~~(F) Assignment of Impact Fee Fund Monies. Upon request by the City Council, the City Manager, or his designee, shall present to the City Council a proposed capital improvements program for key public facilities scheduled for construction, and such capital improvements program shall assign monies from each impact fee fund to specific projects and related expenses for key public facilities of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to Section 5-17-8 (refunds) or Section 5-17-9 (credits) shall be retained in the same impact fee fund until the next fiscal year.~~
- ~~(G)(F) Administrative Costs. The City shall be entitled to retain not more than two percent (2%) of each impact fee collected as payment for the expenses of collecting the fee and administering this Chapter.~~ **TEMPORARY RATE FREEZE FOR NEW AND INCREASED FEES IN THE FUTURE. IF THE CITY ADOPTS NEW OR INCREASED DEVELOPMENT IMPACT FEES, THE NEW IMPACT FEE OR THE INCREASED PORTION OF THE MODIFIED IMPACT FEE SHALL NOT BE ASSESSED AGAINST A DEVELOPMENT FOR THE PERIOD OF THE TIME AS PROVIDED FOR AND DEFINED IN A.R.S. §§ 9-463.05(F) AND (T)(4).**
- ~~(H)(G) Mistake or Misrepresentation. If a development impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the City to the applicant within thirty (30) days after the City's acceptance of the recalculated amount, with interest EARNED BY THE CITY since the date of such overpayment. at the rate then earned by the City on its participation in the State Investment Pool. Any amounts underpaid by the applicant shall be paid to the City within thirty (30) days after the City's acceptance of the recalculated amount, with interest THAT WOULD HAVE BEEN EARNED BY THE CITY FROM since the date of such underpayment. at the rate then earned by the City on its participation in the State Investment Pool. In the case of an underpayment to the City, the City shall not issue any additional permits or approvals for the development for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty-(30-) day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then current owner of the land.~~
- ~~(H)(H) Discretion to Reduce Impact Fees. In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the City Council may agree to pay some or all of the impact fees imposed on a proposed development from other funds of the City that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the City Council and shall be made pursuant to goals and objectives expressed by the City~~

Council to promote such development.

~~(J)~~(I) Appeals. Any determination made by any official of the City charged with the administration of any part of this Chapter may be appealed to the City Council by filing ~~(1) MANAGER, OR HIS DESIGNEE. THE DETERMINATION OF THE CITY MANAGER, OR HIS DESIGNEE, MAY BE APPEALED TO THE CITY COUNCIL COMMITTEE THAT IS DESIGNATED BY THE CITY TO HEAR SUCH APPEALS. ALL APPEALS MUST INCLUDE~~ a written notice of appeal, ~~(2) THAT CONTAINS AN a-written explanation of why the appellant feels that a THE~~ determination was in error. **THE WRITTEN NOTICE OF APPEAL** Appeals must be filed with the City Clerk within ~~forty-five~~ **THIRTY (4530)** days after the determination for which the appeal is being filed. ~~A time and place for hearing the appeal shall be established, and the City Clerk shall mail notice of the hearing to the appellant at the address given. The hearing shall be conducted at the time and place stated in such notice.~~ The determination of the City Council **COMMITTEE** at the hearing shall be final.

~~(K)~~(J) Periodic Review. ~~The impact fees and the administrative procedures established by this Chapter shall be reviewed at least once every three (3) fiscal years to ensure that (1) the demand and cost assumptions underlying such fees are still valid, (2) the resulting fees do not exceed the actual cost of constructing key public facilities of the type for which the fee was paid and that are required to serve new development, (3) the monies collected or to be collected in each impact fee fund have been or are expected to be spent for key public facilities of the type for which such fees were paid, and (4) that such key public facilities will benefit those developments for which the fees were paid. BIENNIAL AUDIT. THE CITY SHALL CONDUCT A BIENNIAL CERTIFIED AUDIT IN ACCORDANCE WITH A.R.S. § 9-463.05(G)(2) IF AND TO THE EXTENT APPLICABLE TO THE CONTINUATION OF THE IMPACT FEES FOR THE PAYMENT OF PLEDGED DEBT AMOUNTS AND AS REQUIRED FOR ANY FUTURE ADOPTED IMPACT FEES.~~

~~(L)~~(K) Annual Report. Within 90 days of the end of each fiscal year, the City shall file with the City Clerk an annual report accounting for the collection and use of the fees for each service area and shall post the report on its website in accordance with A.R.S. § 9-463.05(N) and (O), as amended.

SECTION 11: RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 12: CONTINUATION OF FEES UNTIL DEBT PAID OFF. The City of Mesa hereby, again, pledges the City's Development Impact Fees to retire debt service to pay for a portion of the costs for construction and equipping certain necessary public services, including Water, Wastewater, Parks, Library, Fire, Public Safety, and Storm Water projects. Development Impact Fees will continue to be used for the repayment of bonds, notes or other debt service obligations as set forth in the Pledged Debt Analysis for Continuation of Impact Fees. The City of Mesa hereby determines that the City of Mesa Development Impact Fees may continue, and will be continued, to be collected at the rate currently assessed as shown in Table 1 of Title 5, Chapter 17 of the Mesa City Code to repay the pledged debt amounts that are set forth in the Pledged Debt Analysis for Continuation of Impact Fees. Accordingly, the City of Mesa Development Impact Fees Table 1 shall remain unchanged. Upon the City receiving Development Impact Fees in an amount equal to the amount of the pledged debt as set forth in the Pledged Debt Analysis for Continuation of Impact Fees for a particular impact fee category, the Development Impact Fee for such impact fee category shall no longer be collected and such fee shall be considered (automatically and without any further action by the City Council) eliminated until and unless a new impact fee is adopted in compliance with A.R.S. § 9-463.05.

SECTION 13: ADOPTION OF PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES. The City of Mesa hereby adopts the findings and conclusions of the Duncan-Associates report entitled Pledged Debt Analysis for Continuation of Impact Fees for the City of Mesa, Arizona, dated April 16, 2013.

SECTION 14: DISCONTINUATION OF THE STORM WATER IMPACT FEE IN THE POTENTIALLY EXEMPT AREA. This Ordinance changes subsections 5-17-6(A)(7) & (8) so that no storm water impact fee will be charged in the “potentially exempt” areas as shown on the “Storm Water Drainage Impact Fee Map.” These changes are being made because the pledged debt for projects in the “potentially exempt” areas is substantially paid off and the City has elected to discontinue charging the storm water impact fee in the “potentially exempt” area.

SECTION 15: EFFECTIVE DATE. The effective date of this ordinance shall be 75 days following adoption by the Mesa City Council.

SECTION 16: PRESERVATION OF RIGHTS AND DUTIES. The repealing provisions of this ordinance do not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of the repeal.

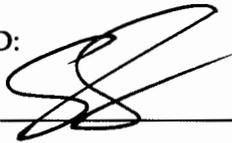
SECTION 17: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 18: PENALTY. Penalties shall be as prescribed in section 5-17-11 of the Mesa City Code.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona, this 28th day of October, 2013.

APPROVED:

Mayor



ATTEST:

City Clerk

