



Ordinance

ORDINANCE NO. 197

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA REPEALING ORDINANCE #127 AND ADDING ARTICLE 6-7, **IMPACT FEES**, TO THE SAN LUIS MUNICIPAL CODE

Be it ordained by the Mayor and Council of the City of San Luis, Arizona:

SECTION ONE: That Ordinance #127 is hereby repealed in its entirety .

SECTION TWO: That the San Luis Municipal Code, Chapter Six, BUILDING, is supplemented by adding Section 6-7, IMPACT FEES, as follows:

Article 6-7	<u>IMPACT FEES</u>
6-7-1	FEE ADMINISTRATION
6-7-2	DEFINITIONS
6-7-3	PURPOSE
6-7-4	LIMITATIONS
6-7-5	INTERGOVERNMENTAL AGREEMENTS, PURPOSES
6-7-6	PROGRAM MANAGEMENT
6-7-7	RECOUPMENT AND EXEMPTIONS
6-7-8	IMPACT FEE NEEDS ASSESSMENT
6-7-9	HEARING, NOTICE, PROCEDURES, AND FEES
6-7-10	ASSESSMENTS
6-7-11	AUDITS
6-7-12	APPEALS

SECTION 6-7-1 – FEE ADMINISTRATION – Management of Function

The City Administrator, or his designee, shall have the immediate control and management of all things pertaining to the city impact fee function and shall cause to be performed all acts that may be necessary for the fair and efficient management of said impact fee function. The Council shall have the power to prescribe such other and further fees, rules and regulations as it may deem necessary.

SECTION 6-7-2 – Definitions - In this chapter unless the context requires otherwise:

- A. “Impact Fee” means a fee to be charged as a condition of approval of a subdivision and/or of a building permit based on the public capital cost of one or more new facilities or items of infrastructure wholly or partly made necessary by a development project, rather than simply on the cost of processing an application. (For purposes of this chapter, such fees are referred to as “application processing fees.”) This is a fee imposed on a benefit area by the council to pay for a proportionate share of specified public facilities and/or infrastructure items that are required to serve a development project.
- B. “Facility” means any building or other physical improvement that makes possible and eases the provision of a public service such as education, health, recreation, cultural activities, fire and police protection, or general governance.
- C. “Infrastructure” means any construction that is necessary to and makes possible the provision of a physical public service such as storm water control and drainage, water supply, sanitary sewerage, transportation, or communications, which in turn are necessary to and make possible a wide range of economic and social activities.
- D. “Benefit area” means a defined geographic area in which specified public facilities or items of infrastructure are of direct benefit to residents or other users.
- E. “Benefit area plan” means a map identifying the benefit area of a specified facility or infrastructure item, as well as a budget for the facility or infrastructure item’s capital cost.
- F. “Council” means the legislative body of the City of San Luis, Arizona.
- G. “Developer” means any person, corporation, organization or other legal entity undertaking a specified development project.
- H. “Development” means any construction or expansion of a building or structure, any change in the use of a building or structure or any land use change that affects the City’s need for public facilities and/or infrastructure items.
- I. “Development agreement” means an agreement between the City and either a community facilities district (pursuant to ARS § 48-709 C), a landowner, or any other person having an interest in real property that may specify or is otherwise related to any of the following:
 - (1) The duration of the agreement.
 - (2) The permitted uses of property subject to the agreement.

- (3) The density and intensity of uses and the maximum height and size of proposed building within such property.
 - (4) Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.
 - (5) Provisions for preservation and restoration of historic structures.
 - (6) The phasing or time of construction or development of property subject to the agreement.
 - (7) Conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursement over time.
 - (8) Conditions, terms, restrictions and requirements relating to the City of San Luis' intent to form a special taxing district pursuant to Title 48, Special Taxing Districts, Arizona Revised Statutes.
 - (9) Conditions on sewer service.
 - (10) Any other matter relating to development of the property.
- J. "Impact fees projects plan" means a public document that identifies all proposed expenditures for projects funded with impact fees in the current fiscal year and at least the four fiscal years thereafter.
- K. "Discount rate" means the interest rate which is expressed in terms of a percentage per year and which is used to adjust past or future financial or monetary payments to present value.
- L. "Encumbered" means the award of a contract for a public facility for which a impact fee has been imposed.
- M. "Exaction" means a condition or requirement which is attached to a development project approval and which compels the payment, dedication or contribution of goods, services, land, or money to a public or quasi-public entity.
- N. "Present value" means the current value of past, present, or future payments which are adjusted to a base period by a discount rate.
- O. "Proportionate share" means that share or portion of total capital facility or infrastructure item capital cost that is reasonably attributable to or caused by an individual development project.

- P. “Public facilities & infrastructure” mean capital improvements for roadways, wastewater collection systems and treatment facilities, effluent delivery systems and treatment facilities, flood control, neighborhood parks intended to serve development within a one-half mile radius and potable water distribution systems and treatment facilities that have a useful life expectancy of three or more years.
- Q. “Public facilities & infrastructure capital costs” mean those capital costs associated with the project planning, design and construction of new or expanded publicly-owned facilities and equipment that have a life expectancy of three or more years, as well as the related land acquisition, land improvement, design and engineering. These costs do not include routine and periodic maintenance expenditures, personnel training, or other operating costs.
- R. “Roadway” means right-of-way acquisition and construction of roads, road shoulders, curbs, gutters and sidewalks, as well as traffic signal installation.

SECTION 6-7-3 – Purpose

This Ordinance is for the purpose of requiring that new development pays for its fair share of public facilities through the imposition of impact fees which will be used to finance, defray or reimburse the City for all or a portion of the costs of public facilities which serve such development. The amount of each impact fee shall be calculated based upon methodology which insures that the fee is roughly proportional to the impacts of new development on public facilities. The City assumes responsibility for and will pay for with general city revenues all public facility needs for existing development.

SECTION 6-7-4 – Limitations

- A. Impact fees are to be charged only if they result in beneficial use to the development project.
- B. Impact fees are to be charged only for one or more specified public facilities that are identified in a benefit area plan.
- C. Monies received from impact fees are to be placed in a separate fund and accounted for separately and are to be used only for the purposes authorized. Interest earned on monies in the separate fund shall be credited to the fund.
- D. The amount of any impact fees assessed is to bear a reasonable relationship to the burden imposed upon the City to provide additional, necessary public services to the development project. In determining the extent of the burden imposed by the development project, the City is to consider, among other things, the contribution made or to be made in the future in cash or through taxes, fees, or assessments by property owner(s) towards the capital cost of the necessary public service(s) covered by the impact fee.

SECTION 6-7-5 – Impact Fees: Intergovernmental Agreement, Purposes

The City will, upon Council action, enter into intergovernmental agreements to accept and disburse impact fees for construction of a public facility or infrastructure item pursuant to a benefit area plan, including an agreement with a municipal property corporation, Yuma County, community facilities district, another municipality, or a special taxing district for the joint establishment of a needs assessment, the adoption of benefit area plan and the imposition, collection and disbursement of impact fees to implement a joint plan for development.

SECTION 6-7-6 – Impact Fee Program Management

The City will not require, as a condition of development approval, the construction of any facility or infrastructure item or other exaction for which an impact fee ordinance has been adopted, unless the City also credits the reasonable value of facilities advance, dedicated or improved by the developer against the impact fees. No impact fee will be charged for that cost of a public facility that is fully funded by general obligation bond proceeds, highway user fund proceeds, community facilities districts, municipal property corporation or improvement districts.

SECTION 6-7-7 – Impact Fee Standards: Recoupment & Exemptions

- A. All impact fees are to meet the following standards:
- (1) The costs of public facilities for which any impact fee is to be assessed, imposed, levied or collected are to be attributable or related, based on an explicit stated rationale, to the service demands of the benefit area.
 - (2) Impact fees assessed, imposed, levied or collected from development are not to exceed a proportionate share of the costs incurred in providing a specified public facility or specified public facilities.
 - (3) Impact fees are to be used and expended for the benefit of the benefit area that pays the impact fee. The following rules are to be observed:
 - (a) On collection, each set of impact fees shall be accounted for in a fund that clearly identifies the kind of public facility of which the impact fee was established. Impact fees are to be invested with all interest accruing to the fund.
 - (b) A benefit area plan is to be established and recorded upon final adoption of the plan for each area. Each benefit area is to be appropriate to the nature of the specified public facility and the nature of the service area.

- (c) Except for recoupment (subsection C, below), impact fees are not be collected from a development project until public facilities that bear a reasoned relationship to the needs created by the development project are included in the corresponding benefit area plan.
 - (d) Impact fees are to be encumbered for public facilities within five years after the date of collection, except in cases when a development agreement provides for a longer term. This time may be extended by the Council for a period not to exceed five (5) years.
 - (e) If the impact fees are not encumbered within five years (or another date specified in a development agreement), the City is to refund the amount of the impact fee, along with accrued interest on the amount of the fee at the average annual rate of interest earned by the trust fund during the period, to the owner of the property on which the fee was paid.
- B. For purposes of such refunds, the owner of the property on which an impact fee was paid is the owner of record at the time that refund payment is made. Any action to obtain a refund must begin no later than one year after the date that such a refund becomes due.
- C. The City may, by administrative decision, elect to recoup through an impact fee, the costs of excess capacity in existing public facilities, but only to the extent that a development project is serviced by existing public facilities.
- D. Impact fees may be used to repay a developer for public facilities contributed or paid for by that developer pursuant to a development agreement.
- E. The City may, by Council action on specific development projects, waive impact fees for any development that constitutes affordable housing to moderate, low, or very low income households, as defined by current federal criteria, provided that such a waiver will not result in an increase of the impact fee for other properties in the same benefit area.
- F. The City may, by Council action on specific development projects, waive from impact fees particular types and locations of development that are determined to serve an overriding public interest, provided that waiver will not result in an increase in the impact fee for other properties in the same benefit area.

SECTION 6-7-8 – Impact Fee Needs Assessment

Prior to implementing this Impact Fee Ordinance, the City has conducted a needs assessment for the types of public facilities for which the impact fee carefully distinguishes between existing service deficiencies and the needs that will be occasioned by new development. It contains components that inventory existing facilities and identifies the level of service standards for which the fee is to be assessed and collected, and the projected community needs. The needs assessment is a document separate from this Impact Fee Ordinance.

- A. The City based the needs assessment on supporting data used to develop its impact fee projects plan. The San Luis impact fee projects plan is to be updated annually by staff and subsequently adopted by the Council.
- B. The data sources and methods on which the assessment of the impact fee was determined are available to the public on request.
- C. The amount of impact fee imposed is based on actual public facility capital costs, or reasonable estimates for the expansion of public facilities that are incurred as a result of specified anticipated new development. The fee also includes any service incident to repaying the impact fee needs assessment.
- D. In determining the total amount of monies a specific impact fee is to raise, the City may provide for credits that reflect the present value of contributions or exactions that each new development may make for the same public facility.
- E. In all cases in which a specific impact fee has been adopted to provide for neighborhood parks, credit is to be given for any existing and planned on-site park or recreational facility provided by the developer.
- F. Each specific impact fee is to identify, for the type of facility covered by the fee, any existing deficiencies, based on adopted level-of-service standards and to describe any plans the City may have to remedy any such deficiency. (However, the City does not commit to rectifying all service deficiencies prior to proceeding with the impact fee approach.)
- G. The amount of the impact fee is not to include the cost of remedying any existing public facilities deficiencies.
- H. The capital improvements of the General Plan is to list anticipated fee revenues as a projected source of revenue, together with the percentages of impact fee dollars to be used for funding capital improvements.

SECTION 6-7-9 – Impact Fee: Hearing, Notice, Procedures, and Fees

- A. The needs assessment and a proposed benefit area plan have been submitted to the Council at a public hearing held January 29, 2003. The public hearing was duly advertised in a one-eighth page notice in a newspaper of general circulation in the jurisdiction. The 60-day review period expired on January 29, 2003 and the post 60-day public hearing was held on April 9, 2003, which was at least 14 days prior to the scheduled date and adoption of this Impact Fee Ordinance. The effective date of this Ordinance is 90 days after the formal adoption and is anticipated to be July 30, 2003, or 90 days after the formal adoption of this Ordinance, whichever is later.
- B. This Ordinance has complied with the time period set forth in A.R.S. § 9-463.5, with no new or increased impact fees, and is to be effective until all the time periods in § 9-463.5 have been complied with, which includes the 90-day period after passage of any ordinance.
- C. The Impact Fees are as follows:

Meter Size in Inches	Water	Waste Water	Total Fee
5/8	\$760	\$715	\$1,475
1	\$1,899	\$1,787	\$3,686
1 ½	\$3,798	\$3,573	\$7,371
2	\$6,077	\$5,717	\$11,794
3	\$11,394	\$10,719	\$22,113
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*Impact fees for any meters four inches (4”) and larger are negotiable based on the overriding commercial, retail, or employment opportunities provided by the potential development. Any and all agreements shall be approved by a majority of the San Luis City Council at a duly noticed council meeting. Multi-family and school development impact fees shall be calculated utilizing the American Water Works Association meter equivalent standards for maximum flow capacity.

Other Impact Fees include Police, Fire, Parks, and Administration in the following amounts:

Fee Type	Residential per Unit	Commercial/Retail per 1000 square feet
Police	\$238	\$101
Fire	\$149	\$48
Parks	\$705	\$88
Administration	\$258	\$32
Total Other Impact Fees	\$1,350	\$269

SECTION 6-7-10 – Impact Fee: Assessments

- A. All impact fees are to be assessed at the time the building permit is issued. They shall be collected on issuance of the building permit or as may be specified in a development agreement. Real estate closing documents involving any parcel of land or improvements are to provide written notification of the fact that an impact fee has been assessed or paid and the location of a public office where information about the rights and obligations arising from the assessment or payments of the fee may be obtained.
- B. Any development completed or for which impact fees have been paid prior to the effective date of this ordinance will be governed by the existing developer's agreement and will not pay any additional impact fees. Those developments or lots that have not paid developer's (impact) fees or are governed by developer's agreements for which the impact fee payment deadline has expired shall pay the current impact fees.

SECTION 6-7-11 – Audits

A property owner may request an audit to determine whether the impact fee imposed is roughly proportional to or exceeds the amount reasonably necessary to finance capital improvements attributable to the development project. The City Council shall then retain a qualified independent auditor who shall determine whether the fee is appropriate. The City may require as a condition of the right to such an audit that the property owner pay for the cost of the audit and deposit with the City a sum equal to the reasonable estimated cost of the audit. The decision of the independent auditor is final unless appealed to the Council by the property owner as provided by this article.

SECTION 6-7-12 – Appeals

- A. A person may protest or challenge the imposition of the fee imposed pursuant to this ordinance by filing, with the City Clerk within ninety days of the effective date of this ordinance, a written notice of appeal with full statement of the grounds and an appeals fee of one thousand dollars (\$1,000) per individual fee being contested. The city may continue processing the development application if the notice of appeal is accompanied with a bond or other security in an amount equal to the impact fee.
- B. The appellant bears the burden of proof to demonstrate that the amount of the fee was not calculated according to the procedures established in this ordinance.
- C. At a regular meeting following the filing of the appeal, the City Council shall fix a time and place for hearing the appeal and the City Clerk shall mail notice of hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice and the determination of the Council shall be announced at the conclusion of the hearing or at the next regular meeting of the Council. The determination of the City Council shall be final.

- D. Statute of Limitations - Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality, or validity of any impact fee must be filed and service of process effected within ninety days following the date of imposition of the fee or the final determination of the City Council, whichever is later.

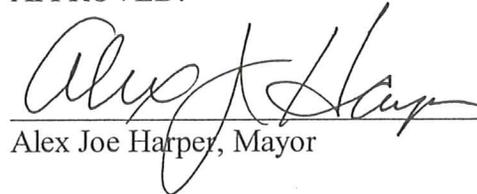
SECTION THREE: All ordinances or parts of ordinances in conflict with the provisions of this ordinance of any part of this ordinance are hereby repealed.

SECTION FOUR: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the remaining portions thereof.

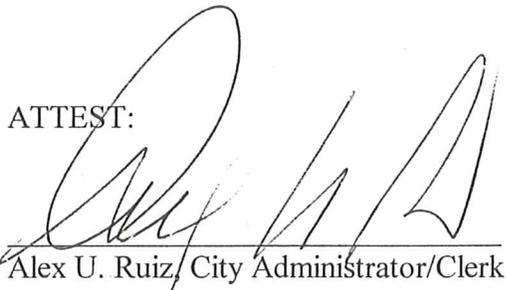
SECTION FIVE: This ordinance shall be interpreted in accordance with the substantive law of the State of Arizona.

PASSED and ADOPTED by the Mayor and Council of the City of San Luis, Arizona this 14 day of May, 2003

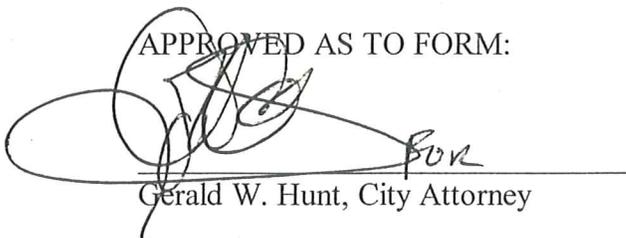
APPROVED:


Alex Joe Harper, Mayor

ATTEST:


Alex U. Ruiz, City Administrator/Clerk

APPROVED AS TO FORM:


Gerald W. Hunt, City Attorney