

**DRAFT**

When recorded return to:  
Clerk of the Board  
P.O. Box 827  
Florence AZ 85132

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE PINAL COUNTY, ARIZONA, BOARD OF SUPERVISORS AMENDING CHAPTER 5.05, DEVELOPMENT FEES, OF THE PINAL COUNTY DEVELOPMENT SERVICES CODE; REPEALING ORDINANCE NO. 030310-DF; ESTABLISHING AN EFFECTIVE DATE; AND DIRECTING ITS PUBLICATION

WHEREAS, on March 3, 2010, the Board of Supervisors (“Board”) adopted Ordinance No. 030310-DF providing for, among other things, the assessment of development fees for streets, parks and public safety facilities based on adopted Capital Improvements Plans and Development Fee Studies dated June 12, 2009, as amended; and

WHEREAS, Ordinance No. 030310-DF is codified in Chapter 5.05, Development Fees, of the Pinal County Development Services Code (“Code”); and

WHEREAS, the County has adopted a revised Capital Improvements Plan and Development Fee Report dated December 23, 2015 (the “Report”) in support of the assessment of revised development fees for streets, parks and public safety facilities determined in such Report to be necessary for the provision by the County of streets, parks and public safety services to development in the respective planning areas; and

WHEREAS, the Board held a work sessions on this Ordinance on November 18, 2015 and February 3, 2016; held a public hearing on this Ordinance after the aforesaid work session on \_\_\_\_\_, 2016, giving no less than 15 days notice thereof; and made copies of this Ordinance available to all Justice Courts, Supervisors’ District Offices, the Office of the Clerk of the Board and the County web site at least 15 days prior to the aforesaid public hearing; and

WHEREAS, the Board of Supervisors has determined it is necessary for the health, safety and general welfare of the public to amend Chapter 5.05, Development Fees, of the Code, and to repeal Ordinance No. 030310-DF.

NOW, THEREFORE, BE IT ORDAINED by the Pinal County Board of Supervisors as follows:

**Section 1:** Chapter 5.05, Development Fees, of the Pinal County Development Services Code is hereby deleted in its entirety and replaced as follows:

Chapter 5.05  
DEVELOPMENT FEES

Sections:

- 5.05.010 Legislative intent and purpose.
- 5.05.020 Applicability.
- 5.05.030 Adoption and assessment procedure.
- 5.05.040 Schedule for payment.
- 5.05.050 Nonbinding estimate.
- 5.05.060 Option to Pursue Alternative Fee Determination.**
- 5.05.070 Credits.
- 5.05.080 Administration of development fees.
- 5.05.090 Infrastructure not included in capital improvements plan.
- 5.05.100 Development fee study review.
- 5.05.110 Authorization.
- 5.05.120 Validity.

5.05.010 Legislative intent and purpose.

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

- A. Requiring new development to pay its proportionate share of the capital costs to Pinal County associated with providing streets, parks and public safety facilities necessary to serve new development by paying development fees related to those facilities.
- B. Setting forth standards and procedures for assessing development fees and administering the development fee program.

5.05.020 Applicability.

This chapter applies to all new development within Pinal County.

5.05.030 Adoption and assessment procedure.

- A. If a capital improvements plan has been adopted, the county may assess development fees within the covered planning area in order to offset the capital costs for streets, parks and public safety facilities determined by the plan to be necessary for public services provided by the county to a development in the planning area.
- B. Prior to the assessment of a development fee, a development fee study shall be prepared, which shall include all appropriate documentation that supports the assessment of the new or increased development fees.

C. The development fee study shall demonstrate that the development fees result in a beneficial use to new development and that the amount of the development fees bears a reasonable relationship to the burden of capital costs imposed on the county to provide the improvements

that serve new development. In determining the extent of the burden imposed by new development, consideration shall be given to, among other things, the contribution made or to be made in the future by taxes, fees or assessments by the property owner toward the capital costs of the necessary public service covered by the development fee.

D. Development fees shall be assessed in a nondiscriminatory manner.

E. In determining and assessing development fees applying to land in a community facilities district established pursuant to ARS 48-701 et seq., the board of supervisors shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess the applicable portion of the development fee based on the infrastructure or costs on that land or infrastructure included in the county's capital improvements plan for which development fees are assessed.

F. Monies received from development fees shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized pursuant to ARS 11-1102. Interest earned on monies in the separate fund shall be credited to the fund.

G. Development fees shall not be assessed or collected from a school district or charter school, other than fees assessed or collected for streets and water and sewer utility functions.

H. Prior to assessing or increasing development fees, the county shall:

1. Give at least 120 days' advance notice of intention to assess new or increased development fees.
2. Release to the public a written report including all documentation that supports the assessment of new or increased development fees.
3. Conduct a public hearing on the proposed new or increased development fee at any time after the expiration of the 120-day notice of intention to assess a new or increased development fee and at least 14 days before the scheduled date of adoption of the new or increased development fee.

I. Development fees, development fee studies and capital improvements plans may be updated and adopted from time to time as determined necessary by the board of supervisors.

5.05.040 Schedule for payment.

Development fees shall be paid prior to the issuance of a construction permit. For purposes of this section, the term "construction permit" includes any building or structure installation permit required by the county but does not include a permit required for reconstruction of a structure if the reconstruction does not cause a change in the number of dwelling units or increase the square footage for nonresidential uses associated with the development, and does not include any

temporary structures allowed by a valid temporary use permit, or pursuant to a special density permit for handicapped or disabled care dwelling units.

#### 5.05.050 Nonbinding estimate.

An applicant may request a nonbinding estimate of development fees due for a particular new development at any time by filing a request on a form provided for such purpose by the county; provided, however, that such estimate may be subject to change when a formal application for a construction permit for new development is made. Such nonbinding estimate is solely for the benefit of the prospective applicant and in no way binds the county nor precludes it from making amendments or revisions to any provisions of this chapter.

#### **5.05.060 Option to Pursue Alternative Fee Determination.**

**Where a development is of a type that (i) has not been contemplated by the county's adopted capital improvements plan and development fee report and (ii) does not closely fit within a particular category of development appearing on such capital improvements plan and development fee report and (iii) has unique characteristics such that the actual burdens and costs associated with providing necessary public services to that development will differ substantially from that associated with other developments in the same impact fee area, the county may require the applicant to provide the county manager or authorized designee with an alternative development fee report. Such report shall be commissioned by the county and paid for by the applicant. Based on a projection of the actual burdens and costs that will be associated with the provision of necessary public services to the development, the alternative development fee report may propose a unique fee for the development based on the application of an appropriate service unit factor, or may propose that the development be covered under the development fee schedule governing a different and more analogous category of development. The county manager or authorized designee shall review the alternative development fee report and shall make a determination as to the development fee to be charged. Such decision shall be appealable pursuant to 3.60.020 of the county's development services code. The county manager or authorized designee may require the applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.**

#### 5.05.070 Credits.

A. Eligibility. The county shall provide a credit toward the payment of development fees for the required dedication of public land and/or infrastructure provided by a developer or property owner for which that fee is assessed. Public land and/or infrastructure provided by a developer or property owner related to a project being assessed development fees which is included in and conforms to the adopted capital improvements plan is eligible for credits against the applicable development fees. Credits may not exceed the total amount of fees which are imposed.

B. Application form and development credit agreement. Application for a credit shall be made on a form provided by the county for such purposes. A development credit agreement is also required as part of any credit granted under this section.

C. Requirements. In order to be eligible for development fee credits, the infrastructure and/or land provided must be a component of the development fee against which the credit is sought and either included in the county's current capital improvements plan, or determined by resolution of the board of supervisors for inclusion in an immediately subsequent update to the capital improvements plan.

D. Procedure. Upon receipt of an application and proposed development credit agreement and any additional information deemed necessary by the county, the county will review the application, agreement and information and, if acceptable, forward the proposed development credit agreement to the board of supervisors for its consideration and approval.

E. Calculation of the Value of Infrastructure. The amount of credit for infrastructure provided shall be the lesser of the following:

1. The amount of the applicable development fees assessed;
2. The value of the infrastructure (or its costs to acquire) assumed in the county's capital improvements plan; or
3. The actual verified cost of the infrastructure provided. The actual verified cost shall be calculated based on contract documents, invoices, and any additional documentation the county deems necessary to determine the actual infrastructure cost.

F. Calculation of the Value of Land. The amount of credit for land dedicated shall be the lesser of the following:

1. The amount of the applicable development fees assessed; or
2. The value of the land (or its costs to acquire) assumed in the county's capital improvements plan.

G. Development Credit Agreement. No infrastructure or land under this section may be accepted in exchange for a credit except pursuant to an executed development credit agreement between the county and the provider of the infrastructure or land, which shall include the following where applicable:

1. A schedule providing for the initiation and completion of the construction and installation of any infrastructure provided;
2. The amount of the development fees, by category, against which a credit is being applied;

3. The eligibility for and the method of the application of any available credit associated with infrastructure provided or land dedicated by the property owner to the county, that may be applied to a subsequent applicant or property owner of the project;
4. The amount of such credits;
5. A provision that all construction and installation of infrastructure shall be in accordance with applicable county laws, rules, regulations and specifications set forth in the county's zoning ordinance, subdivision ordinance, procurement and building codes; and
6. Such other terms and conditions as deemed necessary by the county.

5.05.080 Administration of development fees.

A. The development fee program shall be administered by the county manager through the applicable county departments.

B. The county shall submit an annual report accounting for the collection and use of the fees, which shall include the following:

1. The amount assessed by the county for each type of development fee.
2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.
3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.
4. The amount of development fee monies used to repay:
  - a. Bonds issued by the county to pay the cost of a capital improvement project that is the subject of a development fee assessment.
  - b. Monies advanced by the county from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment.
5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.
6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

C. Within 90 days following the end of each fiscal year, the county shall submit a copy of the annual report to the clerk of the board of supervisors. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

D. The board of supervisors may adopt an administrative fee schedule to cover county expenses associated with the process of applications pursuant to this chapter.

5.05.090 Infrastructure not included in the capital improvements plan.

The board of supervisors retains its legislative authority such that this chapter shall not affect any legal authority the county may have to disapprove a new development or to approve new development conditioned upon the developer providing dedication of land, infrastructure, and improvements necessary to serve the new development.

5.05.100 Development fee study review.

Every five years, starting from the effective date of this ordinance, the board of supervisors will review the development fees in effect in the county. If it deems necessary, the board of supervisors at its discretion may require by board resolution a review and update of the development fees in less than five years.

5.05.110 Authorization.

The various county officers and employees are hereby authorized and directed to perform all acts necessary and desirable to give effect to this chapter.

5.05.120 Validity.

Should any provision of this chapter be deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**Section 2:** Pinal County Ordinance No. 030310-DF is hereby repealed in its entirety.

**Section 3:** This Ordinance shall take effect 30 days after the date of its adoption.

**Section 4:** This Ordinance shall be published at least once in a newspaper of general circulation in the County seat after its adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the PINAL COUNTY BOARD OF SUPERVISORS.

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Chairman of the Board

ATTEST:

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Clerk/Deputy Clerk of the Board

APPROVED AS TO FORM:

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Deputy County Attorney