

ORDINANCE Nº 09-59

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, ADOPTING DEVELOPMENT FEES; PROVIDING FOR AUTOMATIC ADJUSTMENT; PROVIDING FOR ADMINISTRATION OF DEVELOPMENT FEES; PROVIDING FOR MANAGEMENT OF DEVELOPMENT FEE CREDITS; PROVIDING FOR APPEALS; PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF ANY ORDINANCE OR PART OF ORDINANCES OR CODE PROVISIONS IN CONFLICT THEREWITH.

**Whereas**, the Town may assess development fees to offset costs to the Town associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing, other capital costs and associated appurtenances, equipment, vehicles, furnishings and other personal property;

**Whereas**, the Town Council adopted a Notice of Intention to assess development fees on August 11, 2009, at which time the Town adopted an infrastructure improvements plan and released to the public a written report, attached hereto as **Attachment A**, that identified the methodology for calculating the amount of the development fee, explained the relationship between the development fee and the infrastructure improvements plan, included documentation that supports the assessment of a new or modified development fee and identified any index or indices to be used for automatic adjustment of the development fee;

**Whereas**, the Town Council conducted a public hearing regarding the proposed development fees on October 13, 2009;

**Whereas**, the Town Council have found and determined that the development fees imposed hereby shall result in a beneficial use to any development charged; the amount of any development fees assessed bear a reasonable relationship to the burden imposed upon the Town to provide additional necessary public services to the development, considering, among other things, the contribution made or to be made in the future in cash or by taxes, fees or assessments by the property owner towards the capital costs of the necessary public services covered by the development fee; and such fees are calculated and will be assessed in a nondiscriminatory manner, all in accordance with the Infrastructure Improvements Plan and Development Fee Study, dated August 3, 2009, attached hereto as **Attachment A**;

**Whereas**, the Town Council have found and determined that for each necessary public service that is the subject of these development fees, the infrastructure improvements plan estimated future necessary public services that will be required as a result of new development and the basis for the estimate; forecast the costs of infrastructure, improvements, real property, financing, other capital costs and associated appurtenances, equipment, vehicles, furnishings and other personal property that will be associated with meeting those future needs for necessary public services and estimate the time required to finance and provide the necessary public services, as described in **Attachment A**;

**Whereas**, the Town Council have found and determined that the development fees adopted hereby are consistent with the requirements of all state and federal laws and constitutions;

**Whereas**, the Town Council have found and determined that, in concurrence with the opinion of the Executive Committee of the League of Arizona Cities and Towns, §§ 5 and 41 of House Bill 2008 of the Forty-ninth Legislature Third Special Session were unconstitutionally adopted and are therefore not applicable to this Ordinance, in that they are not rationally related to the governor's statement of the subjects to be considered in the special session as required by Arizona Constitution Art. 4, Part 2, § 3, or are not consistent with the limitations on appropriations bills required by Arizona Constitution Art. 4, Part 2, § 20, or both; and

**Whereas**, this Ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of the Town by: implementing the Town's General Plan; requiring new development to pay its proportionate share of the costs to the Town associated with providing necessary public services to the development; and setting forth standards and procedures for assessing development impact fees and administering the development impact fee program.

**Now, Therefore**, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona:

1. **Development Fee Schedule.** The following schedule of development fees is hereby adopted, along with the definitions of terms and principles of interpretation defined in **Attachment A:**

	Community Facilities	Library	Law Enforcement	General Government	Transportation	Total
<b>Residential</b> Per Unit						
Single Family Detached	\$585	\$700	\$69	\$552	\$1,057	\$2,963
Other residential	\$585	\$700	\$69	\$552	\$1,057	\$2,963
<b>Nonresidential</b> Per 1,000 square feet/Hotel Room						
Com/Shop Ctr 50,000 SF or less	N/A	N/A	\$1,304	\$140	\$1,611	\$3,055
Com/Shop Ctr 50,000 SF -100,000 SF	N/A	N/A	\$1,131	\$123	\$1,397	\$2,651
Com/Shop Ctr 100,001-200,000 SF	N/A	N/A	\$1,014	\$109	\$1,252	\$2,375
Com/Shop Ctr over 200,000 SF	N/A	N/A	\$895	\$98	\$1,105	\$2,098
Office / Inst 25,000 SF or less	N/A	N/A	\$727	\$204	\$989	\$1,920
Office / Inst 25,001-50,000 SF	N/A	N/A	\$620	\$193	\$843	\$1,656
Office / Inst 50,001-100,000 SF	N/A	N/A	\$529	\$182	\$719	\$1,430
Office / Inst over 100,000 SF	N/A	N/A	\$450	\$172	\$613	\$1,235

	Community Facilities	Library	Law Enforcement	General Government	Transportation	Total
Light Industrial	N/A	N/A	\$276	\$113	\$376	\$765
Warehousing	N/A	N/A	\$141	\$45	\$192	\$378
Manufacturing	N/A	N/A	\$151	\$88	\$206	\$445
Hotel (per room)	N/A	N/A	\$223	\$21	\$303	\$547

2. Automatic Adjustment. The fees contained in this Ordinance will be automatically adjusted on an annual basis using the Engineering News Record Twenty-City Construction Cost Index or equivalent nationally recognized index unless otherwise directed by the Town Council. The adjustment will be made at the end of each calendar year during which the impact fee study, infrastructure improvements plan and impact fee schedule for the type of facility has not been updated, and will be based on the percentage change in the index over the preceding 12-month period. At least thirty days notice in advance of the effective date of the adjustment, the amount of the adjusted fees will be provided to the public. A current list of all adjusted fees will be on file with the Town Clerk.

3. Administration of Development Fees. The development fee program shall be administered by the Town's Community Development and Finance Departments. There shall be a non-refundable development fee program administrative charge equal to one (1) percent of the gross impact fee. The development impact fee and administrative charge shall be paid at the time of the issuance of the construction permits for the development. No construction permit shall be issued until any applicable development fee has been paid. If the construction permit is for an expansion of an existing use or a change to a different use type, the fee shall be assessed only for the additional impacts of the expansion or change. The development fee shall be assessed using the fees in effect at the time the additional impact occurs. Development impact fees collected pursuant to these regulations shall be placed in separate, interest-bearing accounts for each capital facility category. Development fees and any interest thereon collected pursuant to these regulations shall be spent for improvements that provide a beneficial use to the development that paid the fee.

4. Development Fee Credits. Development fee credits are provided in return for infrastructure dedications, improvements, and financial contributions, or any combination, for those capital facilities listed in adopted infrastructure improvements plan. The facilities for which credits are given will reduce the need for capital facilities that were identified or should have been identified in the infrastructure improvements plan. It is the responsibility of the developer to apply for development fee credits. Credits will be provided in accordance with the following procedures:

(a) The amount of the credits provided will be equal to the cost of the type of improvement used for establishing costs in the infrastructure improvements plan, notwithstanding the developer's actual cost.

(b) No credit against development fees will be provided if the developer is being repaid for the contributions, payments, construction or dedications resulting in the credits from any Town funding source.

(c) The value of the credits shall not exceed the amount due for the capital facility category against which it is to be subtracted.

(d) The credits shall not be transferred from one capital facility category to another.

(e) The developer shall execute a credit agreement prior to securing the first construction permit for the development for which the developer contribution was made. Any credits claimed for construction permits issued prior to a credit agreement shall be deemed waived. Credits agreements may be amended up to two years of final acceptance of the facility for which credit was determined. It is the responsibility of the developer to request application of any development fee credits.

(f) Credits shall not be transferred from one development area to another unless contiguous developments using common infrastructure are combined in a manner acceptable to the Community Development Director and the Town Engineer. The transfer of credit shall require a credit agreement, and shall not apply to construction permits in development areas where permits have been previously issued.

(g) Any applicant for annexation, rezoning, subdivision or site plan approval by the Town who may be eligible for credits against the development fee otherwise assessable to the development may receive a fee determination from the Community Development Department. Credits for improvements identified in an infrastructure improvements plan and constructed pursuant to any agreement, stipulation or condition adopted at the time of any annexation, rezoning, subdivision or site plan approval shall be recorded in such a manner as to allow the appropriate allocation of the credit to future applicants for building permits within the property.

(h) Credit will be provided for capital facilities in the infrastructure improvements plan when the facilities are accepted by the Town, and the Town Engineer has verified that the facilities have met all of its requirements, or when adequate security for the completion of the construction has been provided in the manner required by the Town.

(i) Credit will only be granted to an entity that controls developable land within an infrastructure financing plan area and constructs or provides infrastructure or land that benefits that developable land. Only that entity is permitted to request the distribution of credit provided by the installation or provision of infrastructure or land. However, once credit has been distributed to a particular parcel of land to reduce future development fees associated with building permits on that land, the credit cannot be transferred off of the parcel and will be assumed to transfer to any subsequent owner or lessee, unless otherwise specified by a development agreement with the Town.

(j) If the entity that constructs or provides infrastructure or land sells or relinquishes its property prior to credit being allocated to one or more parcels, as may be permitted in this section, credit can only be allocated if both that entity and the subsequent owner of the property request the distribution of the credit.

(k) If multiple entities jointly provide infrastructure or land, any request for the distribution of credit to one or more parcels must be made to the Town jointly by the entities that provided the infrastructure or land.

(l) Credits will be calculated using costs in the infrastructure improvements plan for the type and size of facility being provided except for the credit for partially completed facilities. Credit for partially completed facilities will be calculated using facility component costs provided by the Engineering Department.

(m) Credits will be distributed uniformly within the development area unless specified otherwise in a development agreement.

(n) Where Town-mandated over-sizing of facilities is required and facility specifications do not match those provided in the infrastructure improvements plan, the Town Engineer may calculate the credit value of the dedicated facility using other methods. These methods will be:

- i. Utilizing actual cost as indicated by the lowest bid from a public bid process;
- ii. Utilizing the lowest bid from a minimum of three sealed bids provided by contractors acceptable to the Town;
- iii. Interpolation of values in the infrastructure improvements plan;
- iv. Utilizing component costs used in the infrastructure improvements plan ; or
- v. Subtracting remaining completion costs from the amount specified in the infrastructure improvements plan.

In all cases the amount of credit provided for design, construction management, and similar costs shall be no more than the percentage included for those categories in the infrastructure improvements plan.

(o) In situations where the Town desires the dedication of a facility, the Town Engineer may provide credit at values higher than that provided in the infrastructure improvements plan. The level of credit shall not exceed actual cost as indicated by:

- i. The actual cost as indicated by the lowest bid from a public bid process,
- ii. The lowest bid from a minimum of three sealed bids provided by contractors acceptable to the Town, or in the case of land acquisition, the amount indicated by an independent appraisal obtained by the Town.

In all cases the amount of credit provided for design, construction management and similar costs should be no more than the percentage included for those categories in the infrastructure improvements plan.

(p) In situations where the capital facility was not included in the infrastructure improvements plan but is of a class and type that is normally included in such plans, credit may be provided by the Finance Department if it can be shown that the facility should have been included in the plan. Capital facilities not included in the infrastructure improvements plan or specified infrastructure financing plan but which would normally be included in such plans and which are calculated for credit shall be included as a necessary facility in the next amendment to the infrastructure improvements plan.

5. Appeals. A final fee determination may be appealed in accordance with the following procedures:

(a) Appeals shall be limited to disputes regarding the calculation of the fees for the particular development.

(b) Appeals shall be initiated on such written form as the Community Development Department may prescribe, within seven calendar days of a final fee determination.

(c) The Community Development Director or his or her designee shall consider the appeal within seven calendar days of the filing of an appeal form.

(d) Appeals of the decision of the Community Development Director or his or her designee shall be made within seven days of the decision of the Community Development Director, upon which time the decision may be appealed to the Town Manager.

(e) Appeal of the decision of the Town Manager shall be made to the Town Council within 7 days of the decision of the Town Manager, and will be heard by the Town Council within 30 days of such appeal.

(f) Building permits may be issued during the pendency of an appeal if the applicant pays the fee at the time the appeal is filed. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered and a refund paid if warranted.

6. Effective Date. That this Ordinance shall be effective at the soonest date after its passage and approval, according to law, and that the development fees imposed hereby shall not be effective until February 1, 2010.

7. Savings Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 validity of the remainder of this Ordinance.

8. Repeal. All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this 17<sup>th</sup> day of November 2009.



Len Marinaccio, Mayor

ATTEST:

  
Judy Morgan, Town Clerk

APPROVED AS TO FORM:

  
Ethan Wolinger, Town Attorney