

ORDINANCE NO. 2021-23

CITY OF BELLA VISTA, ARKANSAS

ADOPTING PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION, EXPENDITURE AND ADMINISTRATION OF IMPACT FEES TO BE IMPOSED ON NEW DEVELOPMENT; PROVIDING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING GENERAL PROVISIONS AND APPLICABILITY; PROVIDING FOR THE INITIAL ADOPTION OF IMPACT FEES; PROVIDING FOR THE ESTABLISHMENT OF IMPACT FEE ACCOUNTS; PROVIDING FOR THE APPROPRIATION OF IMPACT FEE FUNDS; PROVIDING FOR REFUNDS; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND FOR OTHER PURPOSES

WHEREAS, the City is authorized to establish and impose impact fees on new development to finance public facilities necessitated by such development; and

WHEREAS, the City has studied the necessity for and implications of the adoption of impact fees for various public facilities; and

WHEREAS, the City Council has found and determined that most impact fees will have certain common characteristics and, therefore, will benefit from the adoption and use of a uniform procedure for the imposition, calculation, collection, expenditure, and administration of impact fees; and

WHEREAS, the use of uniform procedures, to the extent possible, will be more efficient and expedient for both the City and development applicants than separate procedures for each impact fee; and

WHEREAS, the use of uniform procedures will simplify the implementation and administration of impact fees; and

WHEREAS, the use of uniform procedures will best ensure that impact fees are "earmarked" and expended for the public facilities for which they are imposed and collected; and

WHEREAS, all monies collected from impact fees shall be deposited in interest-bearing accounts which clearly identify the category, account, fund, and public facility for which such fee was imposed; and

WHEREAS, each such category, fund, or account shall be accounted for separately; and

WHEREAS, any interest or other income earned on monies deposited in the interest-bearing accounts shall be credited to the account; and

WHEREAS, the City Council has determined that impact fees are appropriate for funding public facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLA VISTA, ARKANSAS:

SECTION 1: PURPOSE AND INTENT.

The purposes and intent of this Ordinance is to:

- A.** Establish uniform procedures for the imposition, calculation, collection, expenditure, and administration of impact fees imposed on new development;
- B.** Implement the goals, objectives, and policies of the City of Bella Vista relating to assuring that new development contributes its fair share towards the costs of public facilities reasonably necessitated by such new development;
- C.** Ensure that new development is benefitted by the provision of the public facilities funded, in whole or in part by the impact fees;
- D.** Ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

SECTION 2: DEFINITIONS.

The words or phrases used in this Ordinance shall have the meaning prescribed in the current City of Bella Vista Code except as otherwise indicated in this section. To the extent that the definitions of words, terms or phrases as prescribed in Ark. Code Ann. § 14-56-103, as amended, conflict with the definition of words, terms or phrases as defined in this Ordinance or other City ordinances, the provisions of Ark. Code Ann. § 14-56-103, as amended, shall control.

Capital Plan means a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available for new development that includes cost estimates and capacity available to serve new development.

City means the City of Bella Vista, Arkansas.

Development means any residential, multifamily, commercial, or industrial improvements to lands within the City.

Development Impact Fee means a fee or charge imposed the City upon or against a development in order to generate revenue for funding or for recouping expenditures of the City that are reasonably attributable to the use and occupancy of the development. A fee or charge imposed for this purpose is a "development impact fee" regardless of what the fee or charge is named. "Development impact fee" shall not include:

- (i) Any ad valorem real property taxes;
- (ii) Any special assessments for an improvement district;
- (iii) Any fee for making the physical connection for utility services or any fee to recover the construction costs of the line to which the connection is made;
- (iv) Any fees for filing development plats or plans for building permits or for construction permits assessed by the City that are approximately equal to the cost of the plat, plan, or permit review process to City;
- (v) Any fee paid according to a written agreement between the City and a developer for payment of improvements contained within the agreement.

Public Facilities means public-owned facilities that are one (1) or more of the following systems or a portion of those systems:

- 1. Police or public safety;
- 2. Fire protection; and
- 3. Library collection materials.

Director: The Director of the Department of Community Development Services or a designee.

District or Impact Fee District: A defined geographic area or subarea of the City which serves as the service area within which particular impact fees are collected, appropriated, and expended for public facility system improvements that are identified in the capital improvement plan for the public facility.

State means the State of Arkansas.

SECTION 3. DEVELOPMENT IMPACT FEE SCHEDULE

A. Residential Development Impact Fee Schedule.

1. Residential Development Impact Fee Schedule Table

Residential Development	Fees per Unit			
Development Type	Fire/EMS	Police	Library	Total
Single Family	\$788	\$302	\$54	\$1,143
Multifamily	\$428	\$164	\$27	\$619

B. Nonresidential Development Impact Fee Schedule.

1. Nonresidential Development Impact Fee Schedule Table

Nonresidential Development	Fees per 1,000 square feet			
Development Type	Fire/EMS	Police	Library	Total
Commercial	\$2,992	\$298	\$54	\$3,344
Industrial	\$595	\$59	\$37	\$692
Office/Institutional	\$1,169	\$117	\$68	\$1,354

SECTION 4. GENERAL PROVISIONS; APPLICABILITY.

A. Term. These procedures shall remain in effect unless and until repealed, amended or modified by the City Council in accordance with applicable State law and City ordinances and resolutions.

B. Annual Review.

1. At least once every year not later than January 1st and prior to City Council adoption of the Annual Budget and Capital Improvements Program, the Mayor or a designee shall coordinate the preparation and submission of a report on the subject of impact fees.
2. The report shall include the following:
 - a. recommendations on amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular public facilities;
 - b. proposed changes to City policies and/or an applicable Capital Improvements Program, or the capital improvement plan for the particular public facility, including the identification of public facility system improvements anticipated to be funded wholly or partially with impact fees;
 - c. proposed changes to the boundaries of impact fee districts or subdistricts, as appropriate;

- d. proposed changes to impact fee schedules as set forth in the ordinances imposing and setting specific impact fees;
 - e. proposed changes to level of service standards;
 - f. proposed changes in the impact fee calculation methodology;
 - g. other data, analysis, or recommendations as the Mayor or a designee may deem appropriate, or as may be requested by the City Council.
3. **Submission of Impact Fee Annual Report and City Council Action.** The Mayor or a designee shall submit the Impact Fee Annual Report to the City Council, which shall receive the Report and take such actions as it deems appropriate, including but not limited to requesting additional data or analyses and holding public workshops and/or public hearings.

C. Affected Area.

- 1. **Impact Fee Districts.** Impact fees may be imposed on new development in the City for particular public facilities authorized by state law. The particular impact fees may be divided into Impact Fee Districts (and subdistricts) by the City Council for purposes of expenditure of impact fees funds.

D. Type of Development Affected. These Procedures shall apply to all new development as defined in this Ordinance and as defined in the applicable Fee-Setting Ordinances.

E. Type of Development Not Affected. The requirements of this Ordinance and the applicable Fee-Setting Ordinances shall not apply to:

- 1. **Building Permits.** New development for which a building permit has been issued prior to the effective date of these Procedures, as amended.
- 2. **Previous Payment of Impact Fees.** New development for which impact fees have been paid in full.
- 3. **Public Facilities Provided by the State of Arkansas or the Federal Government.** The development of public facilities by the State of Arkansas or the Federal government.
- 4. **No Net Increase in Dwelling Units.** New residential development which does not add a new dwelling unit.
- 5. **No Net Increase in Non-Residential Square Footage.** New nonresidential development which does not add square footage of floor area.
- 6. **Construction Trailer or Office during Construction.** The placement of a construction trailer or office on a lot during the period of construction on the lot.

7. **Use Accessory to Residential Uses.** Adding uses that are typically accessory to residential uses, such as a tennis club or clubhouse, unless it is clearly demonstrated that the use creates a significant impact on the demand for a particular public facility.
8. **Other Uses.** A use, development, project, structure, building, fence, sign, or other activity which does not result in an increase in the demand for a public facility system improvement for which impact fees are imposed and collected in accordance with this Ordinance and the applicable Fee-Setting Ordinances.

F. Effect of Payment of Impact Fees on Other Applicable City Land Development Regulations

1. The payment of impact fees shall not entitle the applicant to a development permit unless all other applicable requirements, standards, and conditions of approval have been met. Such other requirements, standards, and conditions of approval are independent of the requirement for payment of impact fees.
2. Neither these Procedures or the applicable Fee-Setting Ordinances shall affect, in any manner, the use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the City land and development regulations.

G. Amendments. This Ordinance, and any applicable Fee-Setting Ordinances for any particular public facilities may be amended from time to time by the City Council.

SECTION 5. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF IMPACT FEES.

A. In General. An applicant shall be notified by the City of the applicable impact fee requirements at the time of application for a building permit.

B. Calculation.

1. Upon receipt of an application for a building permit, the Director shall determine (a) whether it is a residential or non-residential use; (b) the specific category (type) of residential or non-residential development, if applicable; (c) if residential, the number of new dwelling units; (d) if non-residential, the number of new or additional square feet of floor area and the proposed use; and (e) the Impact Fee District(s) in which the new development is located. After making these determinations, the Director shall calculate the impact fees due before the issuance of a certificate of occupancy. If the applicant has requested an offset pursuant to Section 5(C), the offset shall be calculated and subtracted from the impact fees due.
2. If the type of land use proposed for new development is not expressly listed in the specific Fee-Setting Impact Fee Ordinance, the Director shall (a) identify the most similar land use type listed and calculate the impact fees based on the fees for that land use, or (b) identify the broader land use category within which the specific land use

would apply and calculate the impact fees based on the impact fees for that land use category.

3. An applicant may request a non-binding estimate of impact fees due from the Director for a particular new development at any time. The estimate may change depending on the time a formal application for a building permit is submitted.
4. The calculation of impact fees due from a multiple-use new development shall be based upon the fees due for each use.
5. The calculation of impact fees due from phased development shall be based upon the demand generated by each specific use of the phase of the development.

C. Offsets.

1. Offsets against the amount of impact fees due from a new development may be provided by an applicant for the dedication of land and/or the provision of public facility system improvements that are identified in the capital improvement plan for the particular public facility. if either (a) the costs of such land or public facilities have been included in the capital improvement plan for the public facility or the impact fee calculation methodology, or (b) the land dedicated is determined by the Director to be a reasonable substitute for the cost of public facilities which are included in the capital improvement plan and applicable impact fee calculation methodology.
2. Applications for offsets shall be made on forms provided by the Director and shall be submitted concurrent or prior to an application for building permit. The application for an offset shall be accompanied by evidence establishing the eligibility of the applicant for the offset. The Director shall calculate the applicable impact fees without the offset and then determine whether an offset is due and, if so, the amount of the offset. The offset shall be applied against the impact fees due. In no event shall an offset be granted in an amount exceeding the impact fees due.
3. Offsets for dedication of land or provision of public facility system improvements that are identified in the capital improvement plan shall be applicable only as to impact fees imposed for the same types of public facilities. Even if the value of the dedication of land or provision of a public facility exceeds the impact fees due for the type of public facility, the excess value may not be transferred to impact fees calculated as due from the applicant for other types of public facilities, nor may the excess value be transferred to other applicants or properties.

D. Collection

1. The Director shall collect all applicable impact fees no later than the issuance of a certificate of occupancy unless:
 - a. the applicant is determined to be entitled to a full offset; or

- b. the applicant has been determined to be not subject to the payment of impact fees;
or
- c. the applicant has taken an appeal pursuant to Section 7, and a bond or other surety in the amount of the impact fee, as calculated by the Director, has been posted with the City.

SECTION 6. ESTABLISHMENT OF IMPACT FEE ACCOUNTS; APPROPRIATION OF IMPACT FEE FUNDS; AND REFUNDS.

A. Impact Fee Accounts. An Impact Fee Account is established by the City for each public facility for which impact fees are imposed. Such accounts shall clearly identify the category, account, or fund for which the impact fees are imposed. Subaccounts may be established for individual Impact Fee Districts and subdistricts. All impact fees collected by the City shall be deposited into the appropriate Impact Fee Account or subaccount, which shall be interest bearing. All interest earned or monies deposited to the accounts or subaccounts shall be credited to and be considered funds of the account. The funds of each account shall not be commingled with other funds or revenues of the City. The City shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited, accounted for, and appropriated in accordance with these Procedures, and any other applicable legal requirements.

B. Appropriation of Impact Fee Funds

1. **In General.** Impact fee funds may be appropriated for public facilities identified in the capital improvement plan of the public facility and for the payment of principal, bonds, contracts, and other obligations issued by or on behalf of the City or other applicable service providers to finance such public facilities.
2. **Restrictions on Appropriations.** Impact fees shall be appropriated only (a) for the public facility for which they were imposed, calculated, and collected and (b) within the Impact Fee District or subdistrict where collected. They shall be appropriated and expended within seven (7) years of the date they were scheduled to be expended in the capital improvements plan. Impact fees shall not be appropriated or expended for funding maintenance or repair of public facilities nor for operational or personnel expenses associated with the provision of the public facility.
3. **Appropriation of Impact Fee Funds Outside of District or Subdistrict Where Collected.** Impact fee funds may be appropriated for a public facility located outside of the district or subdistrict where collected, if the demand for the public facility is generated in whole or in part by the new development or if the public facility will serve the new development.

C. Procedure for Appropriation of Impact Fee Funds.

1. The City shall each year identify public facility projects anticipated to be funded in whole or in part with impact fees. The public facility recommendations shall be based upon the impact fee annual review set forth in Section 4(B) and such other information

as may be relevant, but shall not be part of the annual budget and capital improvements programming process.

2. The recommendations shall be consistent with the provisions of these Procedures, the Fee-Setting Impact Fee Ordinance for the public facility, applicable legal requirements, and any guidelines adopted by the City Council.
3. The City Council may include impact fee funded public facilities in the City's annual budget and capital improvements program. If included, the description of the public facility shall specify the nature of the public facility, the location of the public facility, the capacity to be added by the public facility, the service area of the public facility, the need/demand for the public facility, and the anticipated timing of completion of the public facility
4. The City Council shall verify that adequate impact fee funds are or will be available from the appropriate Impact Fee Accounts for the specific public facility.

D. Refunds

1. Eligibility for Refund.

- a. **Expiration or Revocation of Permit or Approval, or Demolition.** An applicant or a successor-in-interest who paid impact fees for new development for which an approval or permit has expired or been revoked, or which is demolished within three (3) years of payment of the fee, is eligible to apply for a refund of impact fees paid.
 - b. **Failure of City to Appropriate Impact Fee Funds Within Time Limit.** The City shall notify the owner of record of a development that has paid impact fees if the City has failed to appropriate and expend the impact fees collected from the applicant within the time limits established in this Ordinance, and the owner of record is eligible to apply for a refund of impact fees paid. The accounting shall be based on a first-in, first out basis.
 - c. **Reduction in Density or Intensity of New Development.** An applicant or a successor- in-interest who paid impact fees is eligible for a refund if the density or intensity of the development for which the impact fees are paid is reduced after payment of the fees, and the fees are not appropriated and expended.
2. **Refund Application for Expiration or Revocation of Permit or Approval, or Demolition.** Applications for a refund due to expiration or revocation of a permit or approval, or demolition of the development shall include: (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the impact fees paid and receipts evidencing such payments, and (c) documentation evidencing the expiration or revocation of the permit or approval, or demolition of the structure pursuant to a valid City issued demolition permit. Failure to

apply for the refund within sixty (60) days following expiration or revocation of the permit or approval, or demolition of the building or structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the City in calculating the amount of the refunds.

3. **Refund Application for Failure of City to Appropriate and Expend Funds.** Applications for refunds due to City failure to appropriate and expend fees collected from an applicant within the time limits established in this Ordinance shall be initiated by the owner-of-record within one hundred and twenty (120) days after the City has notified the owner of a right to a refund. To receive the refund, the owner-of-record shall submit (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, and (b) the amount of the impact fees paid and receipts evidencing the payments. Refunds shall include any interest earned on the impact fees being refunded.
4. The City may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same public facility for new development on the same property, or by other means subject to agreement with the person receiving the refund.

SECTION 7. APPEALS.

- A. A fee payor may pay an impact fee under protest. A fee payor making the payment of impact fees is not estopped from exercising the right of appeal under this Ordinance, or estopped from receiving a refund for any overpayment of the fees, if that is determined to be the case on appeal.
- B. An appeal from any decision of the Director pursuant to these Procedures shall be made to the City Council. If the notice of appeal is accompanied by a letter of credit in a form satisfactory to the City Staff Attorney in an amount equal to the impact fees due, the development may be approved. The filing of an appeal shall not stay the imposition or the collection of impact fees unless a bond or other sufficient surety is provided.
- C. The burden of proof shall be on the appellant to demonstrate that the decision of the Director is erroneous.

SECTION 8. EXEMPTIONS/WAIVERS.

- A. **Filing of Application.** Petitions for exemptions to the application of these Procedures or waivers from specific impact fees shall be filed with the City Council
- B. **Effect of Grant of Exemption/Waiver.** If the City Council grants an exemption or waiver, the amount of the impact fees exempted or waived shall be provided by the City or other appropriate service provider for the particular public facilities, from non-impact fee funds. The funds shall be deposited in the appropriate Impact Fee Account.
- C. **Timing of Provision of Waived/Exempted Impact Fees.** The provision of the amount of exempted or waived impact fees by the City or other appropriate service provider shall be

made within a reasonable period of time, consistent with the applicable capital improvements program and the capital improvement plan for the public facility.

- D. Development Agreements.** Nothing herein shall be deemed to limit the City's authority and ability to enter into development agreements with applicants for new development which provide for payments in-lieu of impact fees.

SECTION 9. MEDIATION.

If there is a dispute between a fee payor and the City about an impact fee amount due, an offset, or a waiver, the City Council and the fee payor may agree to resolve the dispute through mediation, by using a qualified independent mediator, by mutual agreement. Participation in mediation does not preclude the fee payor from pursuing other remedies provided by law.

SECTION 10. CONFLICT.

To the extent of any conflict between other City ordinances and these Procedures, these Procedures shall be deemed to be controlling; provided, however, that these Procedures are not intended to amend or repeal any existing City ordinance, resolution, or regulation.

SECTION 11. SEVERABILITY.

- A.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion of this Ordinance shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance which shall continue in full force and effect.
- B.** If the application of any provision of this Ordinance to any new development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the City Council is that such decision shall be limited to the specific new development immediately involved in the controversy, action, or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Ordinance as a whole or the application of any provision of this Ordinance to any other new development.

SECTION 12. EMERGENCY CLAUSE

The need to provide for impact fees as provided herein is directly related to and necessary for the health, safety and welfare of the citizens of the City. Therefore, an emergency is hereby declared to exist, and this Ordinance shall be effective on September 1, 2021.

Motion to approve by Mr. Flynn, second by Mr. Wozniak. Ayes: 5 Nays: 0

ADOPTED THIS 26TH DAY OF JULY, 2021.

APPROVED:

PETER CHRISTIE
MAYOR

ATTEST:

WAYNE JERTSON
CITY CLERK

Requested by: Mayor
Prepared by: TischlerBise with Jason B. Kelley, Staff Attorney

THIS PUBLICATION WAS PAID FOR BY THE CITY OF BELLA VISTA, OFFICE OF CITY CLERK. THE AMOUNT PAID FOR THE PUBLICATION WAS _____.