

**ORDINANCE 2019-21**

**AN ORDINANCE AMENDING CHAPTER 19 OF TITLE 17, OF THE FRUITA MUNICIPAL CODE CONCERNING PAYMENT OF IMPACT FEES, USE OF IMPACT FEES AND TRANSPORTATION IMPACT FEES**

**WHEREAS**, the City Council hereby finds that collecting impact fees at Final Plat approval for single-family residential subdivisions provides the opportunity for the City to plan and fund capital projects more closely in line with the timing of their impacts, and

**WHEREAS**, the City Council hereby finds that purchasing right-of-way and associated multi-purpose easements is included in the definition of a “capital facility”, and

**WHEREAS**, the City Council hereby finds that the cost of construction for street improvements has increased significantly since the Transportation Impact Fees were last amended by Ordinance 2008-01 on January 3, 2008, and

**WHEREAS**, in December of 2018, Duncan Associates prepared an updated Transportation Impact Fee Study for Mesa County, Colorado, providing a new base value (single-family detached residence) for establishing a Transportation Impact Fee for varying land uses, and

**WHEREAS**, the Fruita Planning Commission held a public hearing on November 12, 2019, regarding the proposed amendments and recommended approval.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:**

**Section 1:** Chapter 17.19 of the Fruita Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

**CHAPTER 17.19**  
**PUBLIC DEDICATIONS AND IMPACT**  
**FEES**

**Sections:**

<b>17.19.010</b>	<b>Purpose</b>
<b>17.19.020</b>	<b>Authority to Impose Dedication or Impact Fee Requirements</b>
<b>17.19.025</b>	<b>Payment of Impact Fees</b>
<b>17.19.030</b>	<b>Criteria for Requiring Dedications or Payment of Impact Fees</b>
<b>17.19.040</b>	<b>Alternative Methods for Determining the Extent of Dedication or Impact Fee Requirements</b>

<b>17.19.050</b>	<b>Basis of Determination</b>
<b>17.19.060</b>	<b>Fee Funds Established; Use of Impact Fees</b>
<b>17.19.070</b>	<b>Credits; Offsets; and Reimbursements</b>
<b>17.19.080</b>	<b>Refund of Impact Fees Paid</b>
<b>17.19.090</b>	<b>Public Parks, Open Space, and Trails Dedication/Fee</b>
<b>17.19.100</b>	<b>School Land Dedication</b>
<b>17.19.110</b>	<b>Fee in Lieu of School Land Dedication</b>
<b>17.19.120</b>	<b>School Land Dedication Fee Trust Fund</b>
<b>17.19.130</b>	<b>Transportation Impact Fee</b>
<b>17.19.140</b>	<b>Chip and Seal Impact Fee</b>
<b>17.19.150</b>	<b>Drainage Impact Fee</b>

**17.19.010 PURPOSE.** The City Council declares it is the policy of the city that dedications of real property and/or exactions in the form of monetary payments shall be required in those instances where the City Council determines that a proposed project, development or improvement: (1) will create the need for new facilities or services, or (2) will result in increased use of existing services or facilities in such a manner as to require the expansion or eventual replacement thereof. In those instances, this Chapter shall be applied to provide a method whereby such dedication or impact fee shall be quantified to assure that a fair and equitable proportionality is established between the cost of the improvements or facilities which are attributable to the proposed development or improvement (and which are therefore the responsibility of the owner/developer), and the overall public cost of the provision of such improvements or facilities. In interpreting and implementing the provisions of this Chapter, the City Council shall give due weight to the needs of the general public, and especially the development or improvement proposed, so as not to burden disproportionately the general public and existing residents with costs or expenses to provide services or facilities, the need for which are generated by the proposed development or improvement.

**17.19.020 AUTHORITY TO IMPOSE DEDICATION OR IMPACT FEE REQUIREMENTS.**

- A. Pursuant to Article XX, Section 6 of the Constitution of the State of Colorado, § 29-20-104.5, C.R.S and provisions of other applicable law, authority is specifically given to the City Council, as a part of its legislative function, to establish general schedules or formulas for monetary impact fees for those classes of development that are subject to real property dedications, public improvement requirements, and/or impact fees.
- B. Moneys collected pursuant to this Chapter shall be utilized to pay for growth-related improvements, facilities and equipment in the general functional area of municipal facilities, recreation, transportation, stormwater management and general government or administration. Operation, maintenance or replacement costs are specifically excluded from eligibility for these funds.
- C. The City Council, in its discretion, shall accept or reject any proposed dedication of land to the city prior to final approval of a proposed development. Dedication of land to the city is required to be in fee title.

**17.19.025 PAYMENT OF IMPACT FEES**

- A. Notwithstanding any provision contained in this Chapter to the contrary, any vacant building lot within the city created prior to January 1, 1980, shall be subject to the impact fees/land dedications set forth in this Chapter. Fees for such lots shall be calculated based on the impact fees in effect and payable at the time of Planning Clearance approval.
- B. Impact fees assessed for developments approved after the effective date of this Chapter shall be calculated based on the impact fees in effect and payable at the time of Final Plat approval.
- C. Impact fees for multi-family dwellings and non-residential subdivisions may be paid at the time of Planning Clearance approval.
- D. Required land dedications cannot be deferred until the time of Planning Clearance approval and must be provided with the plat.

**17.19.030 CRITERIA FOR REQUIRING DEDICATIONS OR PAYMENT OF IMPACT FEES.**

Dedications or payment of an impact fee is required of an owner/developer based on the following:

- A. That a legitimate, identifiable public purpose is served by the required dedication or payment of a fee;
- B. That the City of Fruita is acting within its power to provide the facilities or services for which the fee or dedication is required, either directly or through such dedication/impact fee process, for the benefit of the residents of the community;
- C. That, but for the proposed development or improvement or the proposed development or improvement in conjunction with other developments, actual or proposed, the city would not currently be considering providing or expanding either the services or facilities in question (i.e. existing facilities and services are adequate to service the existing population);
- D. That the proposed development or improvement, and the projected use of facilities and services generated by such development or improvement, is a contributing cause to the need for new or expanded facilities or services;
- E. That the City of Fruita would be legally justified in declining to approve the proposed development or improvement unless the dedication or impact fee was imposed because of the negative effect of the proposed development or improvement, on either existing private property or the city's or another local government's facilities or services;
- F. That the City of Fruita, acting within its lawful authority, requires all owners or developers similarly situated to provide similar, in both quantity and quality, or roughly similar dedications, or to pay the same or roughly the same fees;
- G. That the dedication or impact fee will serve the proposed development or improvement

directly, provided, however, the fact that certain services or facilities of a general nature which provide a general benefit to all residents of the community including residents of the proposed development shall not constitute a valid ground for failing to impose a dedication or fee requirement; and

- H. That the dedication or impact fee is required to and does address needs for capital facilities brought about by the proposed development or improvement which needs are not addressed by any other requirement of this Title.

**17.19.040 ALTERNATIVE METHODS FOR DETERMINING THE EXTENT OF DEDICATION OR IMPACT FEE REQUIREMENTS.**

Upon a determination by the City Council pursuant to the provisions of this Chapter that payment of an impact fee or a dedication of land may lawfully be required, the extent of such fee or dedication shall be determined using whichever of the following methods is selected by the owner/developer.

- A. The city has adopted local or nationally recognized general standards or formulas relating to dedications and impact fees, as contained in this Chapter, and is authorized to adjust or modify these general standards and formulas from time to time by action of the City Council. Such standards or formulas shall be applicable to all owners/developers unless the owner/developer requests the city to implement the provisions of subsection C of this Section. If an owner/developer voluntarily accepts the general standards or formulas of the city by proceeding to a hearing before the Planning Commission and/or City Council, the owner/developer shall be deemed to have waived any rights under subsection C and shall be conclusively presumed to have accepted the general standards or formulas contained in this Chapter.
- B. In the event no general standard or formula has been adopted relating to a certain type of dedication or impact fee, the owner/developer may voluntarily agree to comply with the dedication or fee recommended by the city staff, or request a review and determination by City Council in a public hearing. Unless the owner/developer affirmatively requests the city to implement the provisions of subsection C of this Section, at the pre-application conference prior to submittal of a subdivision Sketch Plan application, PUD Concept Plan application, or similar application, he shall be deemed to have waived any rights under subsection C and shall be conclusively presumed to have accepted the dedication or fee requirement recommended by city staff.
- C. Individualized Study.
  - 1. An owner/developer may request that an individualized study or report be made by the city relating solely to its proposed development or improvement in order to determine whether or not dedications or improvements shall be required, and, if so, to determine the extent thereof. Such study or report shall be individualized to the owner/developer's property or proposed development or improvements, shall fairly and accurately delineate the need for additional public services or facilities which will be generated by the owner/developer's proposed development or improvement, and shall include consideration of the following criteria:

- a. Whether the proposed public improvements or facilities would be required but for the owner/developer's proposed development or improvement;
  - b. Whether, and to what extent, it is reasonably likely that other developments or residents thereof will utilize the public facility or improvement in question;
  - c. Whether existing public facilities or services can adequately serve the proposed development or improvement without the additional expense to construct, expand, or improve the public facility or service in question; and
  - d. The conclusions of such study or report shall contain a recommendation as to the nature of the dedications(s) or impact fee(s) to be required, and the extent or amount thereof. In determining any such extent or amount of a dedication or impact fee to be required of an owner/developer, a proportion shall be established between the total cost of providing or expanding such necessary public facilities or services on the one hand, and the amount or extent of such total cost which is attributable to, or is caused or generated by, the proposed development or improvement, on the other hand. The extent of the dedication or amount of the fee due from the owner/developer must bear roughly the same proportion to the total cost of providing the public services or facilities in question as the need for such facilities or services generated by the owner/developer's development or improvement bears to the general population's need for or use of the facilities or services.
2. The owner/developer shall request such an individualized study or report at the pre-application conference prior to the submittal of a subdivision Sketch Plan application, Planned Unit Development Concept Plan application, or similar application and shall pay to the city a fee established by the City Council to secure a portion of the city's review and supervision expenses. In addition, at such time the owner/developer shall submit to the city a deposit in an amount established by the city equal to the estimated costs the city will incur for any necessary engineering, consultant and planning services to be performed by persons not employed on a full time basis by the city or by city staff. The required fee and deposit shall be tendered to the City Clerk and no public hearing on the owner/developer's application shall be held unless the fee and deposit is paid in full. Unless a request for an individualized study or report is made at the time provided herein, such right shall be deemed to be waived by the owner/developer.
3. Prior to the approval of any requested rezoning, conditional use permit, subdivision, Planned Unit Development, other development or Planning Clearance, if applicable, the owner/developer shall pay to the city the actual cost to the city for any engineering, consultant, or planning services provided under the direction of the city necessary to conduct the individualized study or report.

4. The owner/developer may agree with the provisions of such study or report, in which case the same shall be submitted to the Planning Commission and the City Council as a joint finding and recommendation. However, if the owner/developer disagrees with all or any part of the city's report, the owner/developer may, at his sole expense, submit a written report detailing the owner/developer's findings with regard to the criteria set forth in this Chapter, and shall submit the same to the Planning Commission and the City Council. The Planning Commission and the City Council shall consider such reports at all required public hearings, and the City Council shall ultimately determine what dedications or impact fees, if any, are required, and if so, the extent or amount of such dedications or fees. The decision of the City Council shall be final, subject to the owner/developer's right to appeal to the Mesa County District Court.
- D. Any owner/developer may prepare or cause to be prepared, at his sole cost and expense, a study or report described in subsection (C) above. Said report shall be in writing and, upon the submission of such study or report, the owner/developer shall pay a fee established by the City Council to compensate the city for the review time and costs of the city's staff in reviewing said study or report. In the event the city needs to obtain engineering, consultant or planning services by a person who is not a regular full time employee of the city to conduct such review, the owner/developer shall pay the costs for such services in the manner set forth in subsection (C). The city's staff shall review such study or report, and shall comment thereon in writing to the Planning Commission and the City Council. Any disagreement by the city's staff with any of the findings or conclusions of such study or report shall be delivered to the owner/developer of the development or improvement in question. In the event of disagreement between the city's staff and the owner/developer as to what dedications or impact fees should be required, the City Council shall determine what dedications or impact fees, if any, are required, and if so, the extent or amount of such dedications or fees. The decision of the City Council shall be final, subject only to the right of the owner/developer to appeal the same to the Mesa County Court.
- E. The city staff retains the right to require preparation and submittal of an individualized report or study as a condition of review of the proposed development, with said report(s) paid for solely by the owner/developer.

**17.19.050 BASIS OF DETERMINATION.** In deciding whether to impose a dedication or impact fee requirement, and the extent of such dedication or impact fee, the Planning Commission and the City Council shall consider the criteria set forth in Section 17.19.030, and shall be guided by the overriding principle that an impact fee or public dedication requirement is unfair, disproportionate and unconstitutional if it imposes a burden on an owner/developer which in equity and fairness should be borne by the public in general. However, an impact fee or dedication will be required in compliance with all existing constitutional requirements when the failure of the owner/developer to provide the dedication or impact fee would fail to remedy impacts to the city, other local governments or to the general public created or exacerbated by the owner/developer's proposed project or improvement to such an extent that the City Council would be justified in denying approval of the proposed project or improvement.

**17.19.060 FEE FUNDS ESTABLISHED: USE OF IMPACT FEES.**

- A. All impact fees collected pursuant to this Chapter shall be deposited in funds created by the city and shall be used for the purposes for which they were collected. All impact fees collected pursuant to this Chapter shall be accounted for in the manner required by Sections 29-1-801, et. seq., C.R.S. and other applicable law.
- B. Funds collected from impact fees shall be used to acquire additional real property necessary for the purposes for which they were collected, or for purposes of acquiring or improving capital facilities, as defined in Section 29-20-104.5, C.R.S., related to the purposes for which such funds were collected. A "capital facility" includes planning, preliminary engineering, engineering design studies, land surveys, final engineering, permitting, property acquisition, and the construction and installation of all the necessary features for the facilities. Funds collected from impact fees shall not be used for operations or periodic or routine maintenance of city or other government facilities.
- C. If an impact fee is assessed in lieu of a dedication to address large scale impacts that are borne by the city and by the public in general, as in the case of school land dedication fees, public park, open space, and trail fees, transportation impact fees and storm water and drainage management fees, such impact fees shall be considered as directly benefiting the proposed development even if such fees are used to partially fund the mitigation of impacts that are of general benefit to the community as a whole.
- D. In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended, such fees may be used to pay debt service on such bonds or similar debt instruments.
- E. Monies in the impact fee account shall be considered spent in the order collected, on a first-in/first-out basis.

**17.19.070 CREDITS, OFFSETS, AND REIMBURSEMENTS.**

- A. As a general policy, owners/developers that propose, who are required to construct improvements of a type and nature for which an impact fee would normally be utilized, such owners/developers may be eligible for offsets of up to one hundred (100) percent of the impact fees assessed to a particular phase or filing of a development, provided that the constructed improvements are of general benefit to the City of Fruita and general public, as determined by the city, and are not required solely because of the development. No offsets shall be provided where the constructed improvement is required to be constructed pursuant to the requirements set forth in this Chapter.
- B. For improvements that meet the requirements set forth in subsection (A) above, where the required exceed the costs of the assessed impact fee, the city may fund a portion of the cost of the improvements using collected impact fees, if available.
- C. For constructed public improvements meeting the requirements set forth in subsection

(A) above, where the construction cost exceeds the assessed impact fee, owners/developers may apply to the city for a credit against impact fees assessable at a future phase or filing. The eligibility and amount of the fee credit shall be determined by the city taking into consideration the intent and purpose of the applicable development impact fee and the monetary value of the constructed improvement provided by the owners/developers which otherwise would be paid for from development impact fee proceeds. Credits for the cost of constructed improvements may be carried over or transferred to successive filings or phases within the same development, but in no case shall credits be carried over or transferred to a different development, project or owner/developer. In lieu of applying for the credit set forth herein, owners/developers may apply for reimbursement by the city from impact fees previously collected by the city from the owners/developers in connection with the same development or project.

- D. In all cases, offsets or credits against one (1) fee, such as a transportation impact fee, cannot be used to offset or credit another type of fee, such as a Public Parks, Open Spaces, and Trail Impact Fee Dedication.
- E. Constructed improvements to designated State Highways are eligible for the same offsets and credits provided for improvements to other streets and roads, provided the improvements are of benefit to the general public and not just the property being developed. By way of example, street widening and the installation of a sidewalk along a State Highway would be eligible for offsets and credits, but acceleration/deceleration lanes strictly servicing the development would not be eligible for offsets or credits.
- F. Specific to transportation impact fees, offsets or credits for the value of right-of-way abutting the development are specifically not allowed.
- G. The purpose and monetary value of any offset, credit, or reimbursement against assessed impact fees shall be specifically delineated in the appropriate section of the subdivision or development improvements agreement for the development, and the basis (e.g. cost of constructed improvements) of the offset, credit, or reimbursement shall be detailed in the improvements agreement.
- H. The City Council may, in its sole discretion and by an affirmative vote of at least three fourths (3/4) of all members of the Council, waive, suspend, defer or alter all or some of the impact fees imposed by this Chapter, or agree to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the city that are not restricted to other uses upon finding such waiver, suspension, alteration or payment is necessary to promote the economic development of the city or public health, safety and general welfare of its residents. Any resolution adopted by the City Council providing for the waiver, suspension, deferment or altering of impact fees shall contain specific findings of fact supporting the waiver, suspension, deferment or alternation or payment.

**17.19.080 REFUND OF IMPACT FEES PAID.**



If a development approval expires without commencement of construction or development, the owner/developer shall be entitled to a refund without interest, of impact fees paid, unless otherwise agreed by the city and the owner/developer, except that the city shall retain one (1) percent of the fee to offset a portion of the cost of collection and refund. The owner/developer must submit a letter requesting a refund to the Community Development Department within thirty (30) days following expiration of the development approval granted.

**17.19.090 PUBLIC PARKS, OPEN SPACES, AND TRAILS IMPACT FEE/DEDICATION.**

- A. The City of Fruita has determined that new residential developments cause financial impacts to the city's public park, open space, and trail systems necessitating capital improvements that would not be required without such development. The city has adopted a Parks, Open Space, and Trails Master Plan which provides general policy guidelines and planning recommendations for provision of public parks, open space, and trails. The purpose of this section is to implement and be consistent with the City's Master Plan, specifically, the parks, open space, and trails section of the Master Plan, by requiring all new residential development to contribute a proportionate share of the public parks, open space, and trails necessary to accommodate any impacts or need for such facilities through the dedication of land and/or fees in lieu of land dedications.

The dedication of land and/or the payment of the cash equivalent will enable the city to provide parks in the proper location and of the proper size to serve the citizens of the city. This regulation also is adopted to help discourage the proliferation of small parcels, tracts, and outlots that are ostensibly created as open space and/or parks but are not sized, located or maintained as functional sites for these uses.

Consistent with this Section and with Chapter 17.29 of this Title, every residential development which increases the number of dwelling units above that which was approved as of the effective date of this title shall include a dedication of land to the city or other entity, as determined by the City Council, to be used for public parks, open space, and/or trails and/or payment of a public parks, open space, and trails fee in lieu of such dedication, as provided herein. Accessory dwelling units are not subject to this fee.

- B. Amount of Land Dedication Required. Land for public parks, open space, and trails shall be based on the adopted level of service standard as identified in the Parks, Open Space, and Trails Master Plan (POST Plan) as follows:

For every 1,000 residents, the following parks and trail areas are needed to

meet the level of service standard identified in the POST Plan:

- 2.0 acres of neighborhood parks
- 4.0 acres of community parks, and
- 1.0 mile of trails

Parkland per household is the product of the average household size multiplied by the level of service standard. Average household size is 2.52 people per dwelling unit (which is the US Census Bureau's 2006 Colorado statewide average):

$$\begin{aligned} 2.52 * (2.0/1,000) &= .005 \text{ acres per household for neighborhood parks} \\ 2.52 * (4.0/1,000) &= .010 \text{ acres per household for community parks} \\ 2.52 * (1.0/1,000) &= .0025 \text{ miles per household for primary trails} \end{aligned}$$

- C. Dedication and Improvement of Public Parks, Open Space, and Trails. Standards for when a fee in lieu of land dedication is required or when land is required to be dedicated, including improvements to the dedicated land, is identified in Chapter 29 of this Title.

If credit is to be given for land and improvements dedicated for public use, the credit shall be based on the estimated cost of the improvements including installation costs and the average cost of land in the area. The average cost of land shall be set annually by the City Council by resolution.

- D. Payment in Lieu of Dedication and Improvements. The amount of payment to be provided in lieu of land dedication shall be based on the number of acres of land dedication which otherwise would be required. The following formula, combined with consideration of affordability issues, the goals of the city's Master Plan, and other community issues, will be used to determine the fee required and such fee shall be set annually the City Council by resolution.

Acquisition costs of un-subdivided development-ready land: \$57,000 per acre

Neighborhood park development costs: \$140,000 per acre  
Community park development costs: \$180,000 per acre  
Primary trails development costs: \$420,000 per mile

Neighborhood park fee calculation: .005 acres X (\$57,000 + \$140,000) = \$985 per household

Community park fee calculation: .010 acres X (\$57,000 + \$180,000) = \$2,370

Primary trails fee calculation: .0025 miles X \$420,000 = \$1,050 per household

Maximum combined parkland and trail impact fee =

\$4,405

The above land values and development costs are based on average land values in Fruita and data on recent park and trail construction costs in the region for 2009.

- E. The city may require the applicant to dedicate other land owned by the applicant for use as a public park, open space, or trail. If the city determines to accept other land not within the development instead of, or as partial payment toward, the land dedication/fee payment required hereunder, the amount of land dedication shall be the same amount of land that would otherwise be dedicated within the proposed development.
- F. The proceeds from a fee in lieu of land dedication shall be placed in a public parks, open space, and trails fund established by the city and maintained for the acquisition and improvement of land for public parks, open space, and trails, which may benefit the residents of the city in general, as well as those of the proposed development.

#### **17.19.100 SCHOOL LAND DEDICATION.**

- A. When Required. Every subdivision or other development, which is proposed to contain residential units and which increases the number of permitted residential dwelling units over and above that approved as of the effective date of this Section shall be required to dedicate land for school purposes, based on the increased number of approved dwelling units, if the Mesa County School District No. 51 ("School District") determines that such development includes within it "suitable school lands" which are necessary for implementing a school plan. If such subdivision does not contain "suitable school lands," the fee required under Section 17.19.110 shall be paid in lieu of a school land dedication, based upon the increased number of approved residential dwelling units. The provisions of this Section and Section 17.19.110 shall be the exclusive standards for the dedication of "suitable school lands" and imposition of fees in lieu thereof as prescribed by Section 17.19.110, and in the event of any conflict between such provisions and any other provision contained in this Chapter, the requirements of this Section and Section 17.19.110 shall control.

In the event a dedication of land for school purposes is required under this Section, such dedication shall be made by the owner at or before the time of approval of the subdivision Final Plat, Final Planned Unit Development Plan, or Planning Clearance. No such approval shall be granted until good and sufficient title to the "suitable school lands" to be dedicated under this Section, free and clear of all liens and encumbrances whatsoever, except for current general property taxes and patent reservations, is conveyed or dedicated to, and accepted by, the School District.

- B. Amount. The amount of "suitable school lands" which may be required to be dedicated under this Section shall be roughly proportional to the additional real property required by the School District for expansion of existing school facilities and construction of new school facilities to accommodate enrollment growth from the proposed residential subdivision and the future inhabitants thereof. Such rough proportionality shall be deemed to be met by the following formula:

Number of dwelling units in the proposed residential development x

Student generation fee factor of .023 =  
Number of acres of suitable school lands required

The student generation fee factor is based upon a study conducted by Mesa County Valley School District No. 51 and referenced in the Intergovernmental Agreement between Mesa County Valley School District No. 51 and the City of Fruita, and may be modified from time to time in the manner provided in subsection 17.19.110(F) below.

**17.19.110 FEE IN LIEU OF SCHOOL LAND DEDICATION.**

- A. When Required. Except for developments where a school land dedication is required in accordance with Section 17.19.100 above, or is permitted under subsection (D) below, or an exemption under subsection (C) applies, all proposed developments, which increases the number of approved dwelling units over and above the number approved as of the effective date of this Section, shall pay fees in lieu of school land dedication (SLD fee) in an amount per unit, based upon the increased number of dwelling units, set forth in subsection (F) hereof. In no case shall the requirement of SLD fees or the amount thereof be subject to individualized determination as provided in subsection 17.19.040(C) or (D). SLD fees shall be collected by the city for the exclusive use and benefit of the School District, and shall be expended by such School District solely to acquire real property or an interest in real property reasonably needed for development or expansion of school sites and facilities, or to reimburse the School District for sums expended to acquire such property or interests. Revenues derived from such fees shall be used only for such purposes.
- B. Payment of SLD Fee.
1. No Planning Clearance for a building containing residential units shall be approved until and unless the applicable SLD fee has been paid as required by this Section based on the increased number of approved dwelling units. No SLD fee shall be required or collected under this Section with respect to any subdivision for which final approval has been granted as of the effective date of this Section.
  2. In the sole discretion of the City Council, the city may elect to approve a Planning Clearance subject to payment of required SLD fees due under this Section pursuant to a deferred payment plan. Provided, however, any deferred payment plan shall provide for a performance guarantee such as a performance bond, irrevocable letter of credit, or escrow fund approved by the City Council, to assure payment of such fees.
  3. Any plan for payment of SLD fees on a deferred basis in accordance with subsection (B)(2) above shall be documented in a written deferred payment plan. Such deferred payment plan shall contain, at a minimum, the following:
    - a. The legal description of the real property subject to the deferred payment plan.

- b. A detailed statement of the SLD fees owed pursuant to the condition of approval of the Planning Clearance, which remain unpaid.
- c. The agreement of the owner/developer to pay all SLD fees owed with respect to such real property upon the sale of such property or upon application for a Planning Clearance permit for one (1) or more dwelling units to be constructed on such property, which ever first occurs.
- d. A description of the performance guarantee assuring that such fees shall be paid when due and owing.
- e. The notarized signature of the record owners of the property or their duly authorized agents.
- f. The notarized signature of the Community Development Department Director or his or her designee, indicating approval of the deferred payment plan.

C. Exemptions. The following shall be exempted from dedication of school lands or payment of the SLD fee:

- 1. Subdivisions or other developments containing only non-residential buildings;
- 2. Subdivisions or other developments containing only nursing homes, adult foster care facilities, or specialized group care facilities; and
- 3. Approved residential developments that are subject to recorded covenants restricting the age of the residents of dwelling units contained within such developments in such a manner that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

D. Credits.

- 1. An applicant for subdivision or other development approval who owns other "suitable school lands" within the same School District may offer to convey such lands to the District in exchange for credit against all or a portion of the SLD fees otherwise due or to become due. The offer must be in writing, specifically request credit against fees in lieu of school land dedication, and set forth the amount of credit requested. If the city and the School District accept such offer, the credit shall be in the amount of the value of the "suitable school lands" conveyed, as determined by written agreement between the city, the School District and the owner/developer.
- 2. Credit against SLD fees otherwise due or to become due will not be provided until good and sufficient title to the property offered under this subsection is conveyed to and accepted by the School District in which the development is located. Upon such conveyance, the School District and the city shall provide the

owner/developer with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and a description of the project or development to which the credit shall be applied.

3. Credits shall not be transferable from one project or development to another.

E. Refund of Fees Paid.

1. Any SLD fee, which has not been expended by a School District within five (5) years of the date of collection shall be refunded, with all accumulated interest, if any, to the person or entity which paid the fee. Prior to such refund, such amount shall be reduced by an amount equal to three (3) percent of the principal amount to be refunded, for the costs incurred by the city in the refund of such fee. The city shall give written notice by first class mail to the person or entity, which paid the fee at the last known address as contained in the records of the city or Mesa County Clerk and Recorder. If such person or entity does not file a written claim for such refund with the city within ninety (90) days of the mailing of such notice, such refund shall be forfeited and shall be retained and used for the purposes set forth in subsection 17.19.110(A).
2. The City Council may, upon the School District's request, extend the five (5) year period of time specified in Paragraph (1) of this subsection above upon a showing that such extension is reasonable necessary in order for the School District to complete or close a purchase transaction entered into in writing by the District prior to expiration of such period, or to give the District an opportunity to exercise a purchase option it acquired prior to expiration of such period. Such request shall be made at a public hearing of the City Council. In no event shall any extension of time exceed one (1) additional five (5) year period.

F. SLD Fees-Establishment and Application.

1. SLD fees shall be collected and held in trust for the use and benefit of the School District pursuant to Section 17.19.120. Such fees shall be expended by the School District to acquire additional real property for expansion of existing school facilities and construction of new school facilities necessitated by new residential development in the School District, or to reimburse the School District for sums expended to acquire such property. The amount of the SLD fee shall be based on a methodology which takes into account the student generation rates of new residential development, the quantity of land required to build new school facilities on a per pupil basis, and the anticipated cost of acquiring suitable school lands in the School District to expand existing school facilities and construct new school facilities to accommodate new residential development without decreasing current levels of educational services.
2. At the time SLD fees are initially adopted and annually thereafter, the City Council shall determine the average cost per acre of "suitable school lands," after a public hearing. The city shall give the School District sixty (60) days prior written notice

of the hearing. Such hearing shall consider the School District's long-range capital improvement plans and any other evidence, comments or recommendations submitted by the School District and the public in making such determination.

3. The SLD fee shall then be set, by resolution of the City Council, in accordance with the following formula:

Cost per acre of suitable school lands within the School District x  
Student generation fee factor of .023=  
SLD fee per dwelling unit

[For example, if the average cost of "suitable school lands" is fifteen thousand dollars (\$15,000.00) per acre, the SLD fee per dwelling unit would be fifteen thousand dollars (\$15,000.00) times (X) .023, or three hundred forty-five dollars (\$345.00).]

4. The student generation fee factor may also be modified at the hearing, provided that either the School District gives notice to the City Council that it requests such a modification at least thirty (30) days prior to the hearing, or the City Council adopts a motion providing for consideration of a modification of said fee factor and its hearing notice to the School District pursuant to this subsection so states. Said hearing shall consider the School District's school facilities plan currently in place, the methodology and data supporting the proposed modification, and any evidence, comments or recommendations submitted by the County Community Development Department, the City's Community Development Department, the School District and interested members of the public.

#### **17.19.120 SCHOOL LAND DEDICATION FEE TRUST FUND.**

A. Creation. A School Land Dedication Trust Fund ("SLD Trust Fund") shall be established for the benefit of School District. All SLD fees collected by the city, pursuant to this Chapter, for approved residential dwelling units in the city and within the boundaries of the School District shall be deposited in the SLD Trust Fund. Such SLD Trust Fund shall be governed by the provisions of this Chapter, as supplemented by the terms of the intergovernmental agreement entered into between the city and the School District. Such agreement shall substantially comply with the requirements of this Section, and shall include, but need not be limited to, provisions regarding the following:

1. Maintenance and management of the SLD Trust Fund as a separate interest-bearing account in accordance with Sections 24-75-601 to 605 C.R.S., apart from all other funds of the city, the funds in which are held in trust for the use and benefit of the School District;
2. The powers and fiduciary obligations of one (1) or more trustees named in the agreement with respect to the management of the SLD Trust Fund;

3. The retention of a specified portion of the SLD fees collected by the city for the reasonable costs incurred by the city in the collection of said fees;
4. An accounting system to ensure that SLD fees are expended for the provision of new or expanded school sites benefiting the School District for which such fees are paid;
5. An annual audit of the SLD fees collected and disbursed, with said audit to be in accordance with generally accepted accounting standards for governmental entities;
6. A periodic update of the School District's school facilities plan;
7. An agreement by the School District to submit an annual report to the city describing the School District's expenditure of SLD fees during the preceding fiscal year;
8. An agreement by the School District to furnish, when requested by the city, an accounting from the chief financial officer of the District concerning the expenditure of the SLD fees paid to the School District; and
9. An annual review by the city of the matters set forth in the report described in subsection 17.19.110(F) above.

Any intergovernmental agreement entered into pursuant to this subsection may contain terms permitting an SLD Trust Fund to be managed by one (1) or more trustees in combination with other SLD Trust Funds established under provisions of comparable school site fee resolutions or ordinances adopted by the county or other municipalities within the county.

B. Ownership. The School District shall be beneficial owner of the funds in its SLD Trust Fund, but the signature of the chief financial officer of the School District, or his or her designee, and the signature of the City Manager or his or her designee, shall be required for the withdrawal of monies from such fund.

C. Earmarking And Expenditure Of SLD Fees.

1. All SLD fees collected by the city shall be properly identified and promptly deposited in the SLD Fee Trust Fund, and shall not be withdrawn for any purpose except as authorized in accordance with this Chapter, and any applicable intergovernmental agreement;
2. Each SLD fee collected by the city pursuant to this Chapter, shall be earmarked for the School District, and shall be expended only for the purposes set forth in this Chapter. Any changes to School District boundaries that would affect the expenditure of fees in lieu of land dedication must be reviewed by the City Council prior to the implementation of such changes. Such fees shall not be used to pay



general obligation bonds, or to compensate for costs incurred by the School District for costs incurred to upgrade existing educational facilities, unless such fees are expended for the purpose of increasing the site or land area for such existing facilities for the benefit of the School District.

3. Upon the written request of the School District or its authorized representative, the City Council or its authorized designee shall promptly notify the Board of Education of the amount of fees in lieu of dedication received and deposited in the SLD Trust Fund for its benefit and the amount of interest earned thereon, as of the end of the month immediately preceding the month in which the request was made. Upon receipt of such notice, the School District may file with the Board a request for disbursement to such District of all or part of the fees and interest accumulated in its SLD Trust Fund for purposes authorized by this Chapter.
4. Such request for disbursement shall be in writing, set forth the amount of funds needed, and contain a brief description of the purposes for which the funds will be used.
5. Such request shall be heard at a regular meeting of the City Council held within thirty (30) days after it is filed, at which time the School District, through its authorized representative, shall demonstrate to the City Council a need for the moneys requested to expend for purposes authorized by this Chapter. Such demonstration shall be deemed sufficient if it is shown that the request is in furtherance of an existing capital improvement or site acquisition plan duly adopted by the Board of Education and has been included and relied upon in its budget for the fiscal year in which the moneys are to be expended. Upon the City Council's approval, which shall not be unreasonably withheld, the requested funds shall be transferred to the School District's Capital Projects Fund.

#### **17.19.130 TRANSPORTATION IMPACT FEE.**

- A. The City of Fruita has determined that new developments and expansion, modification or redevelopment of existing developments cause financial impacts to the city's transportation system necessitating capital improvements that would not be required without such development. These impacts include wear and tear on existing pavements requiring rehabilitation or reconstruction of existing streets, increased traffic volumes requiring widening to improve traffic flow and provide better turning movements, additional traffic control devices and safety concerns associated with the interaction of vehicular traffic with pedestrian and bicycle traffic.
- B. The city has further determined that typically, no single development creates enough traffic to warrant construction of off-site improvements based strictly on a traffic capacity analysis or a required level of service analysis. However, each development incrementally depletes existing capacity and incrementally decreases the level of service. The cumulative impacts from new developments results in unacceptable depletions in capacity and level of service, thereby requiring the expenditure of capital

funds for improvements.

- C. The city has also determined that irrespective of a capacity or level of service analysis for traffic flow, construction of facilities to facilitate safe turning movements for vehicles, and for the safe movement of bicycles and pedestrians are reasonable requirements for urban streets, and shall be accounted for in any impact fee calculation.
- D. Consistent with the city's need to plan for, engineer and construct transportation improvements resulting from the cumulative impacts of new development, including bikeways and sidewalks, the city's general policy is that the proportional impact resulting from a new development be paid by the owner/developer, and consistent with the provisions of this Chapter, a transportation impact fee shall be assessed for new development.
  - 1. For developments for which a site-specific traffic impact analysis is conducted pursuant to Sections 17.19.040 and 17.15.140 of this Title, the transportation impact fee shall be calculated by the city based upon the following criteria:
    - a. An evaluation of the site-specific traffic impact analysis, which shall describe the percentage impact of the development on the local street network in the vicinity of the development. The traffic impact analysis shall include an estimate of twenty (20) year future traffic volumes, and use a pass-by traffic growth rate of two (2) percent or less, unless otherwise approved by the city.
    - b. Estimated costs of future improvements on local streets and intersections, plus a calculated pro rata cost for improvements to regional roads. The scope of future local improvements shall be based on the long-term needs of the city, as determined by the city, consistent with long range planning documents, and irrespective of a strict level of service analysis. Improvements may include, but are not limited to, curb, gutter, and sidewalk; bikeways; traffic signals; pavement widening, replacement, or rehabilitation; traffic calming devices; and traffic control devices. The scope of future regional road improvements, and estimated costs thereof, shall be determined from current and future regional planning studies, including the Transportation Impact Fee Study prepared for Mesa County by Duncan & Associates, and dated September, 2002. (The "Duncan Study"), and the subsequent update (Transportation Impact Fee Study for Mesa County, Colorado) dated December, 2018.
    - c. The roughly proportional impacts from the development on individual local streets and/or intersections multiplied by the total estimated costs for these improvements, plus a calculated pro rata amount for regional roads, shall equal the total transportation impact fee.
  - 2. The base rate for residential subdivisions with single family and duplex dwelling units for which no traffic impact analysis is performed, shall be six thousand seven hundred sixty-three dollars (\$6,763.00) per dwelling unit. The base rate may be adjusted by

resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index. For multi-family dwelling units in excess of two units, the base rate of six thousand seven hundred sixty-three dollars (\$6,763.00) shall be multiplied by a factor of 0.68 per unit for the fee per dwelling unit. Said fees are based upon traffic impact analysis performed according to subsection (D)(1) of this Section and adjusted to reflect recent actual costs incurred on local road projects. The base rate may be adjusted by resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index.

3. The transportation impact fee for commercial, industrial and other uses specified in the following table shall be a base rate of six thousand seven hundred sixty-three dollars (\$6,763) multiplied by the factor listed for that use. The base rate may be adjusted by resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index.

LAND USE TYPE	ITE CODE	UNIT	FACTOR
<b>Other</b>			
Mobile Home/Manufactured Home/RV Park	240	per unit or space	0.53
Hotel/Motel	310/320	per room	0.62
<b>Retail/Commercial</b>			
Shopping Center/Commercial	820	Per 1000 sf floor	1.64
Auto Sales/Service	840/942	Per 1000 sf floor	1.48
Bank, Drive-In	912	Per 1000 sf floor	2.72
Convenience Store w/ Gas Sales	853	Per 1000 sf floor	3.90
Golf Course	430	Hole	1.90
Movie Theater	444	Per 1000 sf floor	4.88
Restaurant, Standard	931	Per 1000 sf floor	2.21
Restaurant, Fast Casual	930	Per 1000 sf floor	3.32
Restaurant, Drive Through	934	Per 1000 sf floor	4.91
<b>Office/Institutional</b>			
Office, General	710	Per 1000 sf floor	0.99
Office, Medical	720	Per 1000 sf floor	3.79
Animal Hospital/Vet Clinic	640	Per 1000 sf floor	2.34
Hospital	610	Per 1000 sf floor	1.17
Nursing Home	620	Per 1000 sf floor	0.46
Place of Worship	560	Per 1000 sf floor	0.40
Day Care Center	565	Per 1000 sf floor	0.66
Elementary/Secondary School	520/522/530	Per 1000 sf floor	0.25
Public/Institutional	500	Per 1000 sf floor	0.56
<b>Industrial</b>			
Industrial	130	Per 1000 sf floor	0.31
Warehouse	150	Per 1000 sf floor	0.18
Mini-Warehouse	151	Per 1000 sf floor	0.16

**Note:** All factors for all uses are based on the sum total of non-regional and regional costs/unit from Table 16 and Table 17 of the Duncan Study published in December, 2018, with the value of the ratio for a single family unit assumed to be 1.0.

The increase in the Retail/Commercial impact fees provided in this Section 3 shall take effect on the phased schedule as provided below:

<b>Year (January 1)</b>	<b>Percentage of Fee to be Imposed</b>	<b>Base Fee</b>
January 1 2020	0%	\$1,589.00
July 1, 2020	25%	\$2,882.50
January 1, 2021	50%	\$4,176.00
July 1, 2021	75%	\$5,469.50
January 1, 2022	100%	\$6,763.00

4. For specific uses not identified in the table above, the transportation impact fee factor shall be determined by the city based on an evaluation of the traffic generating characteristics of the proposed development compared to specific uses listed in the table.
  - a. For non-single family residential developments for which no traffic impact analysis is performed, the transportation impact fee shall be calculated based on the schedule set forth in subsection (3) above.
  - b. A change of use in an existing commercial, industrial, or institutional structure that does not involve a change in the square footage of the structure shall not require a new transportation impact fee unless the use requires a site plan review, conditional use permit or rezone in which case a traffic study may be required and a transportation impact fee may be imposed based on the net increase in traffic. Alternatively, the transportation impact fee assessed shall be calculated based on the difference in Table Values for the new versus the previous use.
  - c. In many instances, a particular structure may include auxiliary uses associated with the primary land use. For example; in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. The impact fees generally are assessed based on the primary land use. If the applicant can document that a secondary land use accounts for over twenty-five (25) percent of the gross floor area of the structure, and that the secondary use is not assumed in the trip generation or other impact data for the primary use, then the impact fees may be assessed based on the disaggregated square footage of the primary and secondary land use.
  - d. For an expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the impact of the new use and/or

square footage as compared to the previous use and/or square footage.

- e. In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.
- f. For fees expressed per one thousand (1,000) square feet, the square footage shall be determined according to gross floor area, measured from the outside surface of exterior walls and excluding unfinished basements and enclosed parking areas. The fees shall be prorated and assessed based on actual floor area, not on the floor area rounded to the nearest one thousand (1,000) square feet.

5. All transportation impact fees shall be deposited in a fund created by the city for transportation improvements until used to construct actual capital facilities and improvements on impacted local streets and intersections, or allocated to regional road improvements. Consistent with Section 17.19.060, the total amount of deposited impact fees may be used at the discretion of the city to construct improvements to the local street network, or to regional street projects, so long as the fees are used to perform improvements to streets and/or intersections impacted by the development.

**17.19.140 CHIP AND SEAL IMPACT FEE.** The city has determined that the life of a new asphalt street can be extended through the use of a "chip and seal" coat within the first two (2) to five (5) years after the construction of the new street. In order to extend the life of asphalt streets in new developments and reduce initial maintenance costs to the City of Fruita, a chip and seal impact fee will be assessed for each new development that provides additional constructed public streets. The chip and seal impact fee changes annually, and is calculated based on the current square yard bid cost of chip and seal work, as contracted by the city, multiplied by the total number of square yards of new asphalt for dedicated, city maintained streets interior to a development as shown in the approved schedule of improvements contained in the applicable subdivision improvements agreement or development improvements agreement.

**17.19.150 DRAINAGE IMPACT FEE.**

- A. The City of Fruita had prepared a Storm Water Management Master Plan (SWMMP) (June 1998) which provides general policy guidelines and planning recommendations for storm water management, and provides specific criteria for calculating drainage impacts and associated impact fees for new developments. The City of Fruita has determined that storm water management is a desirable and necessary part of new developments, and has adopted the Storm Water Management Master Plan (SWMMP) (June 1998) as a component of its Master Plan. Technical criteria for drainage calculations are also found in the Mesa County Storm Water Management Manual (SWMM), which has also been adopted as a component of the city's Master Plan.
- B. Consistent with the justifications and formula found in the SWMMP, a drainage impact fee shall be assessed for all new developments when the calculated runoff volume and/or flow rate from developed conditions exceeds the runoff volume and/or flow rate from historic (pre-development) conditions. A drainage impact fee which the City Council has determined is roughly proportional to the infrastructure impacts caused by the development, shall be calculated according to the following formula:

$$\text{Drainage impact fee (\$)} = B \times (C100_d - C100_h) \times A^{0.7} \text{ where:}$$

B = Base Value = \$17,058.00, as of January 1, 2019, to be adjusted annually for inflation based on the Consumer Price Index, All Items, All Urban Consumers, Western Region, size B/C, published on a monthly basis by the United States Department of Labor (Bureau of Labor Statistics)

(ACPI-U).

C100 = 100-year Rational Method composite runoff coefficient, with subscripts "d" and "h" representing developed and historic conditions respectively.

A = Area to be developed, in acres

- C. Consistent with Section 17.19.060 of this Chapter, drainage impact fees shall be deposited in a fund established by the city for such purposes and shall be used to resolve drainage and flooding issues anywhere within the basin affected by the development being charged the impact fee, and may also be used for city-wide or regional studies and plans, so long as the percentage of impact fees used on city-wide or regional studies and plans is roughly proportional to the percentage of the study or plan devoted to the basin from which the fees were generated.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
ON THE 17<sup>TH</sup> DAY OF DECEMBER, 2019**

ATTEST:

City of Fruita

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City Clerk

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Joel Kincaid, Mayor