

## ARTICLE IX. DEVELOPMENT FEES

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### ***DIVISION 1: GENERAL PROVISIONS***

#### **Sec. 21-9100. Purpose**

The development of land results in new and/or increased demands on city facilities and services, including but not limited to, schools, roads, water, parks, and recreation facilities. The costs of providing such additional services and facilities should be borne by those who create the new or additional need. Accordingly, new development shall contribute toward meeting the increased public service needs as provided in this article. These required contributions, whether in the form of fees or dedicated land, are generally referred to in this article as development fees.

#### **Sec. 21-9110. Methods of Satisfaction**

All development fees required pursuant to this article shall be satisfied through the dedication of land, the payment of a fee, or a combination thereof, as determined by the city. No landowner shall be required to provide a site specific dedication or improvement to satisfy the same need for capital facilities for which a development fee has already been paid by such landowner.

#### **Sec. 21-9120. Development Fee Accounts**

Separate accounts shall be established for each fee imposed under the provisions of this article. The interest earned in each account shall be considered funds of that account and shall be used solely for the purposes authorized for such funds as provided herein.

**Sec. 21-9130. General Land Dedication Requirement**

- (1) **Title.** All lands required to be dedicated under this article shall be dedicated to the city without restriction and free and clear of any and all liens, restrictions, and covenants, regardless of whether the city or another entity will be the ultimate user under the proposed use.
  
- (2) **Preservation.** All lands to be dedicated to the city under this article shall be preserved and protected during the development process. The developer shall not disturb the topsoil or vegetation on the land during the development process nor use the land as a construction staging or stockpiling area. If the topsoil or vegetation is damaged or disturbed, the developer shall pay the cost of restoring such vegetation or topsoil to its original condition. All construction debris and other foreign matter shall be removed from the site prior to dedication.
  
- (3) **Environmental Assessment.** The city may require an environmental assessment of any real property offered to the city, through dedication or other conveyance, for park, open space, trails, rights-of-way, or other public purposes. All such environmental assessments shall be prepared by a qualified professional approved by the city, at the expense of the applicant, and shall address all issues and potential impacts relevant to the subject lands and/or the proposed future use. The city shall not approve a dedication unless the applicant provides remediation of all known hazardous substances or significant risks shown by the environmental assessment. The applicant shall file with the city proof of remediation of hazardous substances or significant risks to a satisfactory level and in compliance with standards established by federal, state or local government. In addition to an environmental assessment, or in lieu thereof, the city may require the applicant to provide indemnification and/or warranties for the environmental condition of any real property dedicated or otherwise conveyed to the city.

**Sec. 21-9140. Appeals**

Appeals pertaining to the calculation of any development fee required by this article may be made to the city manager.

***DIVISION 2: DEVELOPMENT FEES ASSESSED***

**Sec. 21-9200. School Fees**

- (1) **Applicability.** The school fee shall apply to all new residential development located within the city, except:

- (a) Real property that is listed as exempt from real property taxation by the Adams County Clerk and Recorder’s Office, except as used for residential purposes.
- (b) Developments that qualify as housing for older persons pursuant to the Federal Fair Housing Act. In the event that a development intended for housing for older persons fails to qualify, or after having qualified, relinquishes or loses its qualification, the development shall be required to pay the school fee at the time the development is finally determined to be non-qualifying.
- (c) Nursing homes and similar residential accommodations that primarily provide care and supervision to disabled persons or other persons who are generally confined to the facility for medical, physical, or mental reasons.

(2) **Calculations.**

- (a) Student Population per Dwelling. For purposes of calculating the school land needs associated with any new development, the student population per dwelling unit type shall be deemed to be as follows:

Table IX-1. Student Population Per Dwelling Unit

Single-Family Detached	.775	Students per household
Single-Family Attached	.364	Students per household
Townhouse/Condo	.303	Students per household
Apartment	.195	Students per household
Mobile Home	.512	Students per household

- (b) Student Population Per Development. The student population per development is determined by adding together the student population for each type of dwelling unit located within the development. For example, if a proposed development had five single-family detached homes, two townhouses, and ten apartments, the calculation would be as follows:  $5 \times .775$  (for the single-family detached homes) +  $2 \times .303$  (for the townhouses) +  $10 \times .195$  (for the apartments) for a total student population of 6.431.
- (c) School Land Requirement Formula. The land, in acreage, required for dedication shall be determined by multiplying the student population per development by the land area required per student, currently .02 acres. Using the example above, the school land requirement for a development with five single-family detached homes, two townhouses, and ten apartments, is 6.431 (the number

of students in the development) multiplied by .02 (the land area required per student), or .12862 acres.

(3) **Method of Satisfaction.** At the time of city review of a PUD concept schematic or a sketch plat, whichever occurs earlier, the school district(s) affected by the proposed development should indicate its preference for a land dedication or fee-in-lieu payment. If no PUD concept schematic or sketch plat is submitted, the school districts should indicate its preference after reviewing the PUD zone document or the plat application.

(a) **Dedication of Land.** If it is determined that land dedication is appropriate, the developer shall designate on the final plat the land that will be dedicated for future school use. The city shall determine the acceptability of such land. In making such determination, the city may consider the school district's opinion regarding the acceptability of the land in addition to the following:

(i) Whether the size, location, and shape of site are appropriate for a school site;

(ii) Whether the city has received an assurance that utilities will be extended by the developer or other entity to property boundaries of site and that site development will include adjacent street(s), curb, gutter, sidewalks and street lighting. The extension of utilities and site development shall be done in conjunction with development of the adjacent properties. However, if development of the adjacent properties has not been done and the school district is ready to build a school on the site, the extensions of utilities and site development will be completed by school district and reimbursed by the developer in accordance with a reimbursement agreement or recovery agreement at the time such adjacent property is developed;

(iii) Whether there exists no more than a three percent slope of land for the school building site;

(iv) Whether the opportunity exists for shared uses with other community facilities;

(v) Whether there is direct access to a collector or local street for a K-8, elementary school, and middle school or direct access to an arterial or collector streets for a high school; and

(vi) Whether the site is otherwise appropriate for development as a school.

- (b) Fee-in-Lieu. If the city determines that a proposed land dedication is inappropriate, impractical, or otherwise not in accordance with the city's parks and recreation master plans or the school district's long-range facilities master plan, then the payment of a fee-in-lieu of dedication shall be required. The fee will be calculated by multiplying the amount of land required to be dedicated pursuant to the formula set forth in paragraph (2) above, less any land that has been accepted by the city in partial satisfaction of the school impact fee, by the average market value of land per acre. The city shall use the value provided by the school district which shall be based upon the average market value of residential land according to the Adams County Assessor's Office.

If the developer objects to the average market value determination, the developer may request that the city obtain an appraisal of the property by a qualified real estate appraiser mutually agreed upon by the city and the developer, which appraisal will be considered by the city in determining the fair market value. All costs required to obtain such appraisal shall be borne by the developer and the results of the appraisal shall be binding on the parties.

(4) **Collection.**

- (a) Fees-in-lieu shall be paid to the city at the time of final subdivision plat approval or issuance of a new residential building permit, whichever occurs first, or as detailed in a development agreement between the city and developer. Monies which are collected by the city shall be kept in an account as set forth in section 21-9120. The school districts within the city shall be eligible to obtain the monies collected within their district, less a two percent administrative fee, in accordance with paragraph 5 below.
- (b) Land reserved for school sites shall be dedicated to the city and held in ownership by the city until such time as the school district determines to build a school or that a school is not needed or feasible on the site. If the school district determines that there is not a need for a school on the site, then that land may be sold by the city. The owner of the land at the time of subdivision, or assigns, shall have the right of first refusal to purchase the site at the cost of the original fee-in-lieu plus reasonable yearly interest earnings. The proceeds of the sale, minus reasonable costs incurred by the city in the ownership and sale of the site, shall be paid to the appropriate school district. The city and appropriate school district shall review any land that is held by the city for a period of ten years to determine its need and viability as a school site. If it is determined that the land should not be sold, subsequent reviews shall be

conducted thereafter at five-year intervals to determine need and viability.

- (5) **Transfers to School Districts.** Prior to transferring land or money collected pursuant to this article to the school district, the school district shall adopt a resolution which establishes the need for the school site to the satisfaction of the city. In making such determination the city may consider the following:
- (a) Whether the school district has formally adopted a plan that designates a location for the site of a future school;
  - (b) Whether the proposed location is in conformance with the city's comprehensive plan;
  - (c) If money is requested, whether the school district has a contract for the purchase of the school site; and
  - (d) Whether the school district has a site plan with a fully executed development agreement, which includes acreage, fees, and water resources related to the site in addition to other items typically addressed by way of a development agreement.

**Sec. 21-9210. Public Parks and Recreation Fee**

- (1) **Applicability.** The park and recreation fee shall apply to the construction on each newly subdivided lot in the city and any existing subdivided lot that is being redeveloped with a new use that increases the use intensity or density associated with the property.
- (2) **Calculations.**
- (a) Fee Calculation. The public parks and recreation fee is calculated as follows:

Table IX-2. Public Park and Recreation Fee Calculation Table

RESIDENTIAL USES	NON-RESIDENTIAL USES
$[(\text{Average Fair Market Value} \div 12,000) \times n] \times \text{Sq. Ft. of Usable Land}$	$[(\text{Average Fair Market Value} \div 12,000) \times n] \times \text{Sq. Ft. of Usable Land}$

For purposes of this section, the average fair market value shall be based upon the average market value of residential, commercial, and industrial land according to the Adams County Assessor's Office. The symbol n in the above formulas represents a monetary amount that will be assessed per square foot and will be set by city council via resolution. If the developer objects to the fair market

value determination, the developer may request the city to obtain an appraisal of the property by a qualified real estate appraiser mutually agreed upon by the city and the developer, which appraisal will be considered by the city in determining the fair market value. All costs required to obtain such appraisal shall be borne by the developer and the parties shall be bound by the results of such appraisal.

The square feet of usable land for the formula above shall be all land in the subdivision excluding floodplains, public right-of-way dedications, public school sites, public library sites, police station sites, fire station sites, and, private parks and recreation facilities and drainage detention areas. Private streets and oil and gas sites are considered usable land.

- (b) Land Dedication. If the city determines that a land dedication is preferred to the payment of a fee, the amount of land required to be dedicated shall be determined by dividing the fee calculated pursuant to paragraph (a) by the average fair market value.
- (3) **Methods of Satisfaction.** The city will determine whether a land dedication or a fee is required based upon all relevant factors associated with the development and in accordance with the city's parks and recreation master plans.
- (a) Dedication of Land.
    - (i) All land dedicated to the city must possess suitable access and shall be of a location, size, shape, and topography suitable for development into active recreational areas without significant earthmoving, unless otherwise approved by the city. The city shall have the option to accept as part of the dedication requirement major floodplains, narrow strips to provide trail connections from one major recreational or park area to another, or other undevelopable area suitable for open space.
    - (ii) The applicant shall dedicate to the city land for recreation purposes in locations designated in the parks and recreation master plan or otherwise where the dedications are approved by the city manager.
    - (iii) The dedicated area shall be shown and marked on the plat "Dedicated for Public Use."
  - (b) Fee-in-Lieu. Where the development is small and there are no planned parks, trails, or open space per the park and recreation

master plan, the city shall require a cash contribution in lieu of the land dedication.

- (c) **Combination of Land and Fee.** A combination of land dedication and fee-in-lieu may be accepted provided the total value of the land dedication and parks fee is equivalent to the value of the fee calculation.

(4) **Credits.**

- (a) If, at the time of annexation of the land on which a development is proposed, the developer or a predecessor in interest dedicated lands to the city for public purposes, the land dedication requirements of this section shall be reduced by the number of acres dedicated at the time of annexation.
- (b) If the applicant constructs or agrees to construct portions of public parks, trails, and recreation facilities, the cost of those improvements may be deducted from the fee amount, as approved by the city.

- (5) **Collection.** Park and recreation fees or dedications shall be paid or made to the city at the time of final subdivision plat approval or issuance of a new building permit or permits, whichever occurs first, or as detailed in an annexation agreement or development agreement between the city and developer.

(6) **Public Trails.**

- (a) **Dedication and Construction.** The city may require an easement over, or the dedication of land lying within the boundaries of, a development to provide for public trails which are referenced in or depicted on the city's parks and recreation master plans.
- (b) **Credit Towards Park and Recreation Fee.**
  - (i) Land dedications accepted by the city for trails referenced in or depicted on the city's parks and recreation master plans may be credited against the park and recreation fee requirements of the development.
  - (ii) Land dedications accepted by the city for trails not referenced or depicted on the city's parks and recreation master plans may, in the city's discretion, be credited, in whole or in part, against the park and recreation fee requirements of the development.



- (iii) No credit shall be given for any sidewalks or trails within street rights-of-way or on land within the development required to be dedicated for purposes other than park or trail use.

**Sec. 21-9220. Road Impact Fees**

- (1) **Applicability.** All lands in the city that are north of 80<sup>th</sup> Avenue or east of Buckley Road which are developed or undergoing a change in use shall be subject to the provisions of this section, unless the person developing such land establishes to the satisfaction of the city that the proposed development will not cause vehicular trips to increase.
- (2) **Fee Schedule.** Road impact fees shall be imposed in accordance with the road impact fee schedule adopted by resolution of the city council unless a different fee has been approved through the independent fee calculation study process outlined below.
- (3) **Independent Fee Calculation Study.** The road impact fee may be computed by the use of an independent fee calculation study upon application of the developer or, in the event that the particular development is not listed on the fee schedule adopted by city council or the nature, timing, or location of the proposed development makes it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule, election of the city. The party requesting the study shall be responsible for the costs associated with the study. In addition, if the developer applies for the independent fee calculation study, the developer shall be required to pay an application fee as set by city council.
  - (a) **Formula.** The independent fee calculation study shall use the following formula to calculate the road impact fee:

Table IX-3. Road Impact Fee Calculation Table

$FEE = VMT \times NET\ COST/VMT$ $VMT = TRIPS \times \% \text{ NEW} \times LENGTH \div 2$ $NET\ COST/VMT = COST/VMT - CREDIT/VMT$
<p><b>Where:</b></p> <ul style="list-style-type: none"> <li>VMT = Vehicle-miles of travel placed by the development on the major road system during the PM peak hour</li> <li>TRIPS = Peak hour trip ends during PM peak of adjacent street traffic</li> <li>% NEW = Percent of trips that are primary trips, as opposed to passby or diverted-link trips</li> <li>LENGTH = Average length of a trip on major road system</li> <li>÷ 2 = Avoids double-counting trips for origin and destination</li> <li>COST/VMT = Average cost to create a new vehicle-mile of capacity (VMC) based on planned arterial improvements</li> <li>CREDIT/VMT = Revenue credit per VMT, based on estimated state/federal funding for City arterial improvements in Northern Range over 20 years divided by total existing arterial VMT</li> </ul>

- (b) Calculations. The fee calculations shall be based on data, information, or assumptions contained in this section or independent sources, provided that:
    - (i) The independent source is an accepted standard source of transportation engineering or planning data or information; or the independent source is a local study on trip characteristics carried out by a qualified traffic planner or engineer pursuant to an accepted methodology of transportation planning or engineering; and
    - (ii) The percent new trips factor and average trip length used in the independent fee calculation study, if different from those contained in the Road Impact Fee Study for the same land use type, shall be based on actual surveys conducted in Commerce City.
  - (c) Approval. If the independent fee calculation study satisfies the requirements of this section, the fee determined in the independent fee calculation study shall be deemed the fee due and owing for the proposed traffic-generating development. The adjustment shall be set forth in a fee agreement. If the independent fee calculation study fails to satisfy the requirements of this section, the fee applied shall be that fee established by city council for the traffic-generating development.
- (4) **Collection.** Road impact fees shall be paid to the city at the time of issuance of a building permit for the development. The fee may be computed separately for each building permit.
  - (5) **Reimbursement.** Any person subject to the road impact fee may apply for reimbursement up to but not exceeding the full obligation for impact fees due pursuant to the provisions of this section, for any contribution, payment, or construction accepted and received by the city for any non-site-related road capital improvements on the major road system that are identified in the Road Impact Fee Study. No reimbursements shall be provided for land dedication or for site-related improvements or for improvements to the major road system not specifically identified in the Road Impact Fee Study. Reimbursement shall be in an amount equal to the fair market value of the construction at the time of its completion, or the value of the contribution or payment at the time it is made to the city. Reimbursements shall be transferable in the same development but shall not be transferable for reimbursement for impact fees required to be paid for other public facilities.
  - (6) **Road Districts.** For the purpose of ensuring benefit for fees paid, three road benefit districts are established. Impact fee funds shall be spent for

building, maintaining, and improving roads within the benefit district in which the traffic-generating development paying the fee is located. The road benefit districts are designated as all incorporated areas of the city located as follows:

- (a) Benefit District 1 is the area of the northern range west of Highway 2 and north of East 80<sup>th</sup> Avenue;
- (b) Benefit District 2 is the area of the northern range between Highway 2 and the boundary generally defined by Piccadilly Road and illustrated on the benefit district map;
- (c) Benefit District 3 is the area of the northern range east of the boundary generally defined by Piccadilly Road and illustrated on the benefit district map; and

#### **Sec. 21-9230. Water Acquisition Fee**

- (1) **Applicability.** Water acquisition fees shall be assessed on the construction of new structures in the city, except that no fee shall be assessed when the new structure replaces an existing structure on the site and does not result in an increase in the density or intensity of use on the property or the new structure is being constructed for the purpose of housing a governmental or quasi-governmental entity or service.
- (2) **Fee.** The water acquisition fee is set at \$732.79 for each dwelling unit or non-residential structure for calendar year 2009 and shall escalate at a rate of 10 percent per year effective upon January 1 of each successive year. The monies collected pursuant to this section shall be used to acquire water rights for the purpose of watering city parks, recreational facilities, and other city owned facilities.
- (3) **Collection.** Water acquisition fees shall be paid to the city upon the issuance of a building permit.

*Paragraph (2) amended by Ord. 1854, April 2011*

#### **Sec. 21-9240. Drainage Fees**

- (1) **Applicability.** All construction requiring issuance of a building permit in the following areas shall pay a drainage fee in accordance with the provisions of this section unless specifically excluded under paragraph (2).
  - (a) Third Creek Drainage Basin. For purposes of this article, the Third Creek Drainage Basin is defined by the Third Creek (Downstream of DIA) Outfall Systems Planning Study Update dated September 2005 submitted by Kiowa Engineering Corporation on file in the

office of public works of the City of Commerce City and contains the following watershed description:

*“The study area consists of the Third Creek watershed downstream of Denver International Airport (DIA) that is located in the City of Brighton, Commerce City and unincorporated Adams County. The total study area has a drainage area of 14.5-square miles and is an east bank tributary to the South Platte River.”*

- (b) Direct Flow Area 0053. For purposes of this article, the DFA 0053 drainage basin is defined by the Drainage Impact Fee Report dated January 11, 2006 submitted by Kiowa Engineering Corporation on file in the office of public works of the City of Commerce City and contains the following watershed description:

*“DFA 0053 is an east bank tributary of the South Platte River. DFA 0053 drains about 9 square miles at the South Platte and about 5.5-square miles within Commerce City. Major features in the watershed include E-470, I-76, US Highway 85, and State Highway 2. “*

- (c) Buffalo Run Tributary Drainage Basin. For the purposes of this section, the Buffalo Run Tributary Drainage Basin is a 2.4-square mile study area generally bounded by the O'Brian Canal on the north, East 104th Avenue on the south, Chambers Road on the west and the E-470 beltway on the east.

- (d) Second Creek Drainage Basin. For purposes of this article, the Second Creek Drainage Basin is defined by the Commerce City Regional Drainage Facilities for Second Creek Drainage Basin report, prepared by Kiowa Engineering Corporation, dated September 2003 on file in the office of public works of the City of Commerce City and contains the following watershed description:

*“Second Creek is an east bank tributary of the South Platte River. Second Creek extends from the South Platte River about 1.5 miles southwest of the City of Brighton, upstream about 15 miles to the area south of DIA. Second Creek drains about 27-square miles at the South Platte and about 15-square miles at the Commerce City upstream boundary.”*

- (2) **Exceptions.** Drainage fees shall not be assessed against land dedicated for school sites, city parks, city-owned open space, floodplain areas, and the Rocky Mountain Arsenal National Wildlife Refuge and such other construction as may be determined by the city to not contribute to the need for the regional drainage improvements provided for in this article.

- (3) **Calculation.** Drainage fees vary depending upon the drainage areas in which construction occurs. The fees for each drainage area are established by resolution of city council. These fees must be multiplied by the number of developable acres involved in the development. For purposes of this section, “developable acre” means any land excluding floodplain, arterial roads, and railroad rights-of-way.
- (4) **Credits and/or Reimbursements.** Credits and/or reimbursements toward or from payment of the drainage impact fee shall be given to developers who construct and pay for regional drainage improvements for which the regional drainage improvement fees are otherwise required by this section provided that such regional drainage improvements:
- (a) Are first authorized by the city;
  - (b) Are constructed in accordance with plans approved by the city; and
  - (c) After construction, are accepted by the city.
- (5) **Collection.** Drainage impact fees imposed pursuant to this article shall be paid to the city upon issuance of a building permit unless the developer of the land on which such construction is to take place has reached prior agreement with the city for prepayment of the fee for all or the affected portion of the development. Issuance of a building permit shall not be refused for reasons caused solely by regional drainage, so long as the regional drainage improvement fee imposed by this article is paid.