

**VILLAGE OF TAOS SKI VALLEY  
ORDINANCE NO. 2022-30**

**AN ORDINANCE OF THE VILLAGE OF TAOS SKI VALLEY,  
AMENDING ORDINANCE NO. 22-30, AS AMENDED, SECTIONS 6.22 and  
6.37,**

**TITLED “DEFINITIONS;” REPEALING SECTION 13.4, TITLED  
“IMPACT FEES;” AND REPEALING AND REPLACING SECTION 23,  
TITLED “DEVELOPMENT IMPACT FEES;” AND ESTABLISHING  
PROCEDURES FOR THE ADOPTION AND IMPLEMENTATION OF  
REVISED DEVELOPMENT IMPACT FEES, ALL IN ACCORDANCE  
WITH THE NEW MEXICO DEVELOPMENT FEES ACT, NMSA  
SECTION 5-8-1, *et. seq.***

**WHEREAS**, the imposition of development impact fees by municipal governments is authorized under, and governed by, the New Mexico Development Fees Act (“the Act”), NMSA Section 5-8-1, *et. seq.*, as amended, and ensures that new development pays its proportionate share of the capital costs related to the additional demand for public facilities; and

**WHEREAS**, the Village Council recognizes that new development causes and imposes increased demands on public facilities, so that development impact fees should be adopted, implemented, assessed, and collected for new development in relation to the following capital improvements of the Village of Taos Ski Valley (“Village”) and in compliance with the Act:

(a) Water supply, treatment and distribution facilities, and wastewater collection and treatment facilities, and storm water, drainage, and flood control facilities;

(b) Roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping, and any local components of state and federal highways;

(c) Buildings for fire, police and search and rescue, as well as essential equipment related thereto;

(d) Parks, recreational areas, open space, trails and related areas and facilities; and

(e) Any other facilities and capital projects authorized by the Act; and

**WHEREAS**, the Village Council appointed a Capital Improvements Advisory Committee (CIAC), pursuant to the Act, in order to review Land Use Assumptions (LUA), and a Capital Improvements Plan (CIP). The CIAC reviewed and made recommendations to the Village Council regarding the LUA and CIP, and the Council accepted the LUA on September 28, 2021, and the CIP on December 14, 2021. Both the LUA and CIP were also reviewed by the Village Planning and Zoning Commission, with recommendations to the Village Council; and

**WHEREAS**, the Village Council believes that establishing and assessing development impact fees is necessary to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable directly to new development, and in compliance with the Act and §5-8-4 and §5-8-5 therein; and

**WHEREAS**, through adoption of this Ordinance, the Village Council seeks to protect the public welfare through the implementation of fair and accurate development impact fees in full compliance with the Act and finds that there exists a rational relationship and proportionality between the capital costs of providing public facilities as set forth herein, and the development impact fees imposed on new development under this Ordinance to provide for such public facilities of the Village.

**THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF TAOS SKI VALLEY AS FOLLOWS:**

**Section I. Definitions**

Village Ordinance No. 2022-30, as amended, Section 6.22, titled “Definitions,” is hereby amended to add the following new or amended terms:

*Capital improvement* means land or facilities for purposes of construction or improving public facilities; for transportation and transit, including without limitation, streets, street lighting and traffic control devices and supporting improvements, roads, overpasses, bridges, and related facilities; storm drainage facilities; for water and wastewater facilities; for parks and recreation improvements; for acquisition of open space; for public safety, including police and jail facilities; for public buildings of all kinds; and for any other capital project identified in the Village’s Capital Improvement Plan (CIP). Capital improvement also includes the design, engineering, inspection and testing, planning, legal, land acquisition, and all other costs associated with construction of a public facility.

*Capital improvements plan* means a plan required by the New Mexico Development Fees Act and that identifies capital improvements or facility expansion for which impact fees may be assessed.

*Development impact fee* means a charge or assessment imposed by the Village on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of

construction, development fees, and any other fee that functions as described by this definition. The term does not include utility connection or hook-up fees.

*Facility expansion* means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development, including schools and related facilities.

*Land use assumptions* includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a five-year period.

*New development* means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

## **Section II. Repeal**

Village Ordinance No. 2012-30, as amended, Section 13.4, titled “Impact Fees,” is hereby revoked and repealed in its entirety.

## **Section III. Repeal and Replacement**

Village Ordinance No. 2017-30, as amended, Section 23, titled “Development Impact Fees,” is repealed in its entirety and replaced with the following Section 23:

### **1. Intent and Purpose.**

A. This Section is adopted for the purpose of promoting the health, safety, and welfare of the residents of the Village of Taos Ski Valley by:

(a) Implementing the Village of Taos Ski Valley Land Use Assumptions (LUA) and Capital Improvements Plan (CIP).

(b) Implementing the Village's plans for public facilities by requiring new development to pay its fair and proportionate share of the costs of necessary capital improvements and public facilities through the imposition of Development Impact Fees (DIFs) that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the Village for public facilities and capital improvements that serve and are attributable to new development.

(c) Setting forth standards and procedures for assessing, refunding, crediting, reducing and/or amending DIFs, adopting and implementing DIFs, and administering the Village's DIF program in compliance with the New Mexico Development Fees Act, NMSA Section 5-8-1, *et. seq.*, as amended (the Act).

## **2. Applicability**

A. This Section shall apply to all new development, as defined in the New Mexico Development Fees Act (the Act), and to all fees and charges imposed by the Village to finance different types of capital improvements and public facilities, as set forth herein, the need for which is created by new development. These fees are in addition to, and separate from, the necessary water and sewer connection or hook-up fees, and any other administrative fees to be assigned for planning review or upon the issuance of a building permit.

B. These fees do not apply to, nor can such fees be assessed by the Village for the maintenance, improvement, or repair of existing facilities that cannot be directly attributable to the impacts of new development, or for other prohibited activities set forth in §5-8-5 of the Act.

### **3. DIFs Established and Assessed**

A. Development Impact Fees (DIFs), including water and sewer system development fees, are hereby adopted and incorporated into this Ordinance, as adopted by the Village Council in a separate Resolution.

B. DIFs may be amended from time to time by Resolution, adopted by a majority of the Village Council, in compliance with this Ordinance and the Act.

C. The Village's LUA and CIP may also be amended by Resolution of the Village Council, as otherwise set forth in the Act.

D. The development projects occurring in areas not served by the Village's water or wastewater systems are exempt from the water and wastewater system development fees, including in the Amizette area of the Village.

### **4. Items Payable by DIFs**

A. DIFs assessed to new development shall not exceed the cost to pay for the new development's proportionate share of the cost of capital improvements or facility expansions, based upon service units, needed to serve that new development.

B. Projected debt service charges may be included in determining the amount of DIFs where they are used for the payment of principal and interest on

bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the CIP.

C. Development Impact Fees shall be used to pay for the costs associated with designing and constructing capital improvements and facility expansions and may also be imposed to pay the following:

(a) The cost of formulating a Capital Improvements Plan (CIP), including fees actually paid or contracted to be paid by the Village to an independent qualified professional, who is not a Village employee, for the preparation or updating of a CIP.

(b) Planning, surveying, and engineering fees paid to an independent qualified professional who is not a Village employee for services provided for, and directly related to, the construction of capital improvements or facility expansions.

(c) Up to three percent of total DIFs may be used for the administrative costs of Village employees who are qualified professionals, as these services are related to capital improvements or facility expansions.

## **5. Items Not Payable by DIFs**

A. Development Impact Fees shall not be imposed or used to pay for:

(a) Construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the CIP.

(b) Repair, operation, or maintenance of existing or new capital improvements or facility expansions.

(c) Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development.

(e) General administrative and operating costs of the public facilities, except as specifically provided herein.

(f) Principal payments or debt service charges on bonds or other indebtedness.,

(g) Other prohibited activities and related costs under §5-8-5 of the Act.

## **6. Manner for Assessment and Collection of DIFs and Timing**

A. Assessment of a DIF shall be made at the earliest possible time.

B. Collection of a DIF shall be made at the latest possible time.

C. For land that has been platted in accordance with the Village's subdivision or platting procedures before the effective date of this Ordinance, or for land on which new development occurs or is proposed without platting, the Village may assess the DIFs at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four (4) years from the date of development approval or issuance of a building permit, whichever date is earlier.

D. For land that is platted after the effective date of this Ordinance, the Village shall assess the DIFs at the time of recording of the subdivision plat, and this assessment shall be valid for a period of not less than four (4) years from the date of recording of the plat.



E. Collection of DIFs shall occur no earlier than the date of issuance of a building permit.

F. For new development that is platted in accordance with the Village's subdivision or platting procedures before the adoption of an applicable DIF, a DIF shall not be collected on any service unit for which a valid building permit has already been issued.

G. After the expiration of the four-year period described in subsections C and D above, the Village may adjust the assessed DIFs to the level of current DIFs as provided by this Ordinance, or amendments thereto.

H. The Village may enter into an agreement with the owner of a tract of land for a method of payment of the DIFs over an extended period of time, otherwise in compliance with this Ordinance and the Act.

I. After assessment of the DIFs attributable to the new development or execution of an agreement for payment of DIFs, additional DIFs, or increases in DIFS, may not be assessed for any reason, unless the number of service units to be developed increases. If an increase in the number of service units occurs, the DIFS which may be imposed are limited to the amount attributable to the additional service units.

## **7. Restrictions on Collections of DIFs**

A. DIFs may be spent only for the purposes for which the fee was imposed as shown by the CIP, and as authorized and not otherwise prohibited by this Ordinance and the Act.

B. DIFs shall be collected and paid for capital improvements or facility expansions only where construction is commenced within seven (7) years, and service available to new development within a reasonable period of time after completion of construction, considering the type of capital improvement or facility expansion to be constructed, but in no event longer than seven (7) years. This period of time may be extended, provided the Village obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions.

C. In lieu of paying DIFs directly to the Village, a developer party of new development may itself construct or finance the capital improvements or facility expansions, subject to approval by the Village, and in accordance with any applicable master development agreements with the developer party.

D. The Village shall maintain DIFs in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted. Interest earned on DIFs shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of fees under this Ordinance and the New Mexico Development Fees Act, as amended (the Act).

E. As part of its annual audit process, the Village shall prepare a report describing the amount of DIFs collected, encumbered, and used during the preceding year by category of capital improvement, facility expansion, and service area.

## **8. Refund, Credit, and Reduction of DIFs**

A. New development may apply for a refund, credit, or reduction of DIFs in compliance with this Ordinance and the New Mexico Development Fees Act, as amended.

B. Any developer party seeking the refund, credit, or reduction of a DIF shall submit a formal application or request to the Village, explaining the rationale for the refund, credit, or reduction, which application or request may be based on §5A of the Ordinance and §5-8-4 and §5-8-5 of the Act. All refunds, credits, and reductions of DIFs shall be given in compliance with the New Mexico Development Fees Act, as amended.

C. The Village Council shall have the final authority to determine the amount of any refund, credit, or reduction of DIFs. In considering the request, the Village Council may factor in other sources of benefits, credits, or public monies that are related to the new development or that are being contributed by the developer.

D. Appropriate reasons for refund, credit, or reductions of DIFs may include the following:

(a) If existing facilities are available and service is not provided or the Village has, after collecting the DIF, failed to complete construction, or provide service, within the time limits set forth in this Ordinance and in accordance with the Act.

(b) If after completion of the capital improvements project or new facility, the DIF collected and paid is more than the actual cost of the project. But only where the difference exceeds the fee paid by more than ten (10) percent.

(c) Where DIFS are not spent as authorized by this Ordinance and the CIP within seven (7) years after the date of payment.

(d) Any refunds shall bear interest calculated from the date of collection to the date of refund and shall be made to the record owner of the property at the time the refund is paid.

E. Any construction of, contributions to, or dedication of on-site or off-site facilities, improvements, or real or personal property shall be credited against DIFs otherwise due from new development. The credit shall include, but not be limited to, the value of dedication of the following:

(a) Land for parks and recreational areas, open space, trails and related areas and facilities or payments in lieu of that dedication; and

(b) Rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

F. Water and wastewater system development fees may not generally be waived by the Village Council due to bond obligations but may be paid from other non-utility funding sources, other than any cost-of-service or rate-based funding.

G. In its discretion, the Village Council may do any of the following in relation to the waiver, refund, or credit of DIFs as it affects new development:

(a) Establish the payment of DIFs from other sources, primarily for the payment of water and wastewater system development fees, or other future DIFs from other non-utility sources, including for qualifying economic development

projects in accordance with any Village economic development plan or ordinance.

(b) Spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions out of Village funds, in order to reduce the amount of the DIFs to be assessed to new development.

(c) Agree to offset or reduce part or all of the DIFs assessed on new development, provided that the public policy which supports the reduction is contained in the Village's appropriate planning documents, ordinances, resolutions or other contractual agreements to which the Village is lawfully bound, and provided that the development's new proportionate share of the system improvement is funded with revenues other than the DIFs from other new developments.

(d) In exercising the discretion set forth herein, the Village Council shall apply principles of equity, fairness, and proportionality, in accordance with law, in relation to, and among developers and new developments.

## **9. Public Notice and Hearing Required for Amending DIFS**

A. Any amendment of DIFs shall be in compliance with the New Mexico Development Fees Act, as amended, and shall require notice to the public and formal approval of a resolution enacted by a majority of the Village Council following a public hearing.

B. Information concerning the LUA, CIP, and DIFs shall be made available to the public prior to any public hearings regarding amendment.

C. The Capital Improvements Advisory Committee (CIAC), as established by the Village Council, shall meet and review any proposed amendments to the LUA, CIP, and DIFs and shall submit written findings and conclusions at least five (5) days prior to a public hearing of the Village Council.

## **10. Mandatory Update of DIFs**

A. The Village shall update the Land Use Assumptions (LUA) and Capital Improvements Plan (CIP) at least every five (5) years. The initial five-year period begins on the day the CIP is formally adopted by the Village Council.

B. The Village shall review and evaluate its current LUA and shall update the CIP in accordance with this Ordinance and the Act, including recommendations by the CIAC.

C. If the Village Council determines that no changes to the LUA, CIP, or DIFs is needed, it may, as an alternative to the updating requirements, publish notice of its determination.

D. The resolution or ordinance determining the need for updating the LUA, CIP, or DIFs shall not be adopted as an emergency measure, and if adopted, must comply with the procedural requirements of the Act.

## **SECTION IV. REPEAL AND CONFLICT OF CODES**

The adoption of this Ordinance supersedes and replaces any previously adopted resolutions, ordinances, policies, and any inconsistent provisions therein.

## **SECTION V. PUBLICATION AND EFFECTIVE DATE**

This Ordinance shall be in full force and effect after its adoption, approval, and publication as provided by law and in compliance with the New Mexico Development Fees Act.

**ADOPTED UPON SECOND READING ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

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**Christof Brownell, Mayor**

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**Attest: Ann Marie Wooldridge, Village Clerk**