

ORDINANCE NO. 11-11

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING PREVIOUSLY ADOPTED DEVELOPMENT FEE SCHEDULES AND AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 7, ARTICLE 7-10, RELATING TO NECESSARY CHANGES TO DEVELOPMENT FEES; AND DECLARING AN EMERGENCY.

WHEREAS, the Town received from Red Oak Consulting two written reports dated April 2009, entitled “Infrastructure Improvement Plan” and “Development Fee Update” and (collectively the “2009 Development Fee Study”) containing the studies and analysis required by ARIZ. REV. STAT. § 9-463.05, as amended (the “Development Impact Fee Statutes”), relating to adjustments to the Town’s then-existing development fees; and

WHEREAS, the Development Fee Study contained the Town Council’s determination of which capital improvements were “necessary public services” for the purpose of the Development Impact Fee Statutes; and

WHEREAS, the Development Fee Study included calculation of the debt service/financing costs for constructing and equipping the Community Center, including the portions of those costs to be borne by the Town’s general fund (on behalf of existing residents) and by impact fees (on behalf of new residents). The resulting General Government Development Fee was then included in the calculations of the repayment of principal and interest on bonds, notes or other debt service obligations issued to pay costs of construction of the Community Center. The General Government Development Fees have been lawfully collected and applied to such debt service accordingly; and

WHEREAS, the 2009 Development Fee Study was released to the public, and a public hearing concerning the modified development fees was held on July 2, 2009, in accordance with the Development Impact Fee Statutes; and

WHEREAS, subsequent to the public hearing, the Arizona Legislature adopted House Bill 2008, Laws 2009, Chapter 7, Forty-Ninth Legislature, Third Special Session, Section 41 of which related to a moratorium on new or increased development fees (the “Moratorium”); and

WHEREAS, to comply with the Moratorium, the Town Council imposed a delay in implementation of the fee increases until expiration or elimination of the Moratorium, while at the same time immediately implementing (subject to statutory time frames) the decreases in fees recommended by the 2009 Development Fee Study; and

WHEREAS, Senate Bill 1525, approved by the Fiftieth Arizona Legislature, First Regular Session, on April 19, 2011 and signed into law by the Governor on April 26, 2011 (“SB 1525”), included changes to the Development Impact Fee Statutes. Contained within these changes was a definition of “necessary public services” that specifically excluded items from being necessary public services, including parks over 30 acres in size (unless such parks provide

a direct benefit to the development), lakes, community/recreation centers of more than 3,000 square feet, libraries that do not provide a direct benefit to development or which are over 10,000 square feet, library books and furnishings, multi-station fire/police training facilities, aircraft and fire and public safety administrative vehicles and equipment (the "Excluded Uses"); and

WHEREAS, the changes to the Development Impact Fee Statutes in SB 1525 provide limitations in assessing and collecting development impact fees for certain Excluded Uses, or portions thereof; and

WHEREAS, SB 1525 also allows a development impact fee adopted before January 1, 2012, to continue to be assessed to the extent that it will be used to provide a necessary public service for which such fee can be assessed pursuant to SB 1525, and the Town may assess and use development impact fees in accordance with SB 1525; and

WHEREAS, the Town Council has determined that (i) the Town's Law Enforcement Development Fee, Fire and Emergency Development Fee and Streets Development Fee do not include Excluded Uses and may be collected at their current rates after January 1, 2012; (ii) the General Government Development Fee may be collected at current rates (minus adjustments for Excluded Uses) until full repayment of the costs related to the Community Center; (iii) the Parks and Recreation Development Fee and Library Development Fee include some portions of Excluded Uses and shall be reduced accordingly, as more particularly set forth in Exhibit A, attached hereto and incorporated herein by reference (the "Interim Development Impact Fee Schedule"); and (iv) the Open Space Development Fee may no longer be collected after December 31, 2011.

WHEREAS, the Town Council desires to amend Chapter 7, Article 7-10, of the Town Code relating to changes required by SB 1525.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town Council finds and determines that the existing bonds, notes or other debt service obligations related to the financing of constructing and equipping the Community Center facilities are to be repaid in whole or part by General Government Development Fee funds. Such General Government Development Fee funds were and are allocated and pledged for purposes of SB 1525 to pay principal and interest on the debt service obligations as contemplated by the Development Fee Study and Section 3.02 of the financing lease-purchase agreement utilized by the Town and the Town of Fountain Hills Municipal Property Corporation with respect to the Community Center. Further, the allocation, pledge and use of the General Government Development Fee funds for the repayment of such debt service obligations meets the requirements of SB 1525 such that collection of the General Government Development Fees may continue beyond August 1, 2014, for the sole purpose of payment of the existing bonds, notes or other debt service, as applicable, related to the Community Center.

SECTION 3. The Fountain Hills Town Code, Chapter 7 (Building and Building Regulations), Article 7-10 (Development Fees), Section 7-10-4 (Procedures for Implementation, Calculations and Collection of Development Fees), Subsection C (Offsets), is hereby deleted in its entirety and reserved for future use.

SECTION 4. The Fountain Hills Town Code, Chapter 7 (Building and Building Regulations), Article 7-10 (Development Fees), Section 7-10-8 (Fees), is hereby amended by deleting Subsection B thereof and reserving it for future use.

SECTION 5. Effective January 1, 2012, the fee schedule adopted by the Town Council as part of its 2011-2012 Fiscal Year budget is hereby amended to include the modified development impact fees set forth in the Interim Development Impact Fee Schedule.

SECTION 6. The immediate operation of this Ordinance is necessary for the preservation of the public health and welfare, particularly to be able to continue to collect development impact fees in conformance with SB 1525 without interruption to Town services and use such monies to pay for the capital needs of the Town on the most economic basis, and an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval by the Town Council as required by law, and it is hereby exempt from the referendum provisions of the Town Code and the Constitution and laws of the State of Arizona.

SECTION 7. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

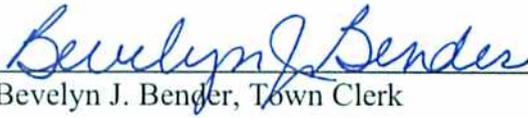
PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills,
December 15, 2011.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



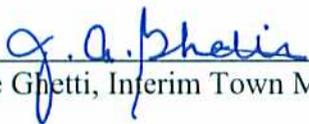
Jay T. Schlum, Mayor



Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Julie Ghetti, Interim Town Manager



Andrew J. McGuire, Town Attorney

**EXHIBIT A
TO
ORDINANCE NO. 11-11**

[Interim Development Impact Fee Schedule]

See following page.

Fountain Hills Revised Fees

<i>Fee Area</i>	<i>Unit</i>	<i>Revised</i>
<i>General Government</i>		
Residential ⁽¹⁾	Dwelling	\$168
Non-Residential ⁽²⁾	s.f.	\$0.105
<i>Law Enforcement</i>		
Residential ⁽¹⁾	Dwelling	\$112
Non-Residential ⁽²⁾	s.f.	\$0.07
<i>Fire & Emergency</i>		
Residential ⁽¹⁾	Dwelling	\$207
Non-Residential ⁽²⁾	s.f.	\$0.129
<i>Library</i>		
Residential ⁽¹⁾	dwelling	\$79
<i>Parks & Recreation</i>		
Residential ⁽¹⁾	dwelling	\$2,118
<i>Streets</i>		
SF-Residential	dwelling	\$5,614
MF-Residential	dwelling	\$3,942
Commercial	s.f.	\$3.835
Hotel	s.f.	\$2.258
Industrial	s.f.	\$1.235
Office	s.f.	\$2.835
<p>(1) Residential includes single and multi-family units. (2) Non-Residential includes commercial, industrial, Hotel and Office square footage.</p>		