

ORDINANCE NO. 2018-FC_____

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT RELATING TO AUTHORIZING IMPACTS TO DISTRICT FACILITIES; CREATING THE PIMA COUNTY FACILITY IMPACT PERMIT ORDINANCE, TITLE 21 OF THE PIMA COUNTY CODE.

The Pima County Flood Control District Board of Directors finds it to be in the best interests of the residents of Pima County that a new procedure for authorizing impacts to District facilities be adopted.

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE FLOOD CONTROL DISTRICT OF PIMA COUNTY, ARIZONA:

SECTION 1. The Pima County Code is amended to add a new Title 21 and Chapter 21.02, as follows:

TITLE 21. PUBLIC LANDS AND FACILITIES

CHAPTER 21.01 COUNTY LANDS AND FACILITIES REGULATIONS - Reserved

CHAPTER 21.02 FLOOD CONTROL DISTRICT LANDS AND FACILITIES REGULATIONS

21.02.010 – Severability

- A. This title and the various parts thereof are hereby declared to be severable. Should any section of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.
- B. Where this title conflicts with or overlaps with any other ordinance or regulation, easement, covenant or deed restriction, whichever imposes the more stringent restriction shall prevail.

21.02.020 - Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. “Applicant” means any person, firm, partnership, association, corporation, or any agent of any such person or group, or the State of Arizona or a political subdivision of the State, proposing an activity that will impact a District Facility. When permit applications are for public capital improvement projects, the applicant is the jurisdiction, agency or public utility responsible for the capital improvement. The responsible party shall be considered the applicant even if a contractor is hired to perform the actual work.
- B. “cfs” means cubic feet per second.
- C. "Chief Engineer" means the Pima County Regional Flood Control District Chief Engineer appointed by the Pima County Flood Control District Board of Directors.
- D. “District” means the Pima County Regional Flood Control District.
- E. “District Facility” means any of the following (i) any land owned by the District, or in which the District has a real property interest, (ii) District Structures, and (iii) any and all lands, drainage ways and structures for which the District has maintenance responsibility. A map identifying District Facilities shall be kept by the Chief Engineer and shall be made available to all interested parties.
- F. “District Structures” – District Structures means conveyances constructed or maintained by the District, such as (i) channels or storm drains, (ii) structures for flood control such as soil cement bank protection, levees, grade controls, detention and recharge basins, and (iii) associated improvements such as river parks, access roads, etc.
- G. “District Lands” means property owned by the District or in which the District has a Real Property Interest, but for which District Structures are not present, including restoration areas and properties that have been dedicated to the District, purchased by the District, or in which the District has a Real Property Interest.
- H. “Drainage Way” means a designated area to convey and manage flood waters whether on property owned in fee title by the District, property in which the District has a Real Property Interest, or property maintained by the District. Drainage ways may be either natural or constructed.
- I. “Facility Impact Permit” means a permit issued by the District which authorizes an impact, either temporary or permanent, to a District Facility for a proposed third party use.

21.02.030 – Facility Impact Permit Requirements

- A. Scope. These rules and regulations are implemented by the District for the purpose of managing impacts of third party uses to a District Facility and shall prevail over and supersede any previous District policy or procedure in conflict therewith. A map of District Facilities shall be kept by the Chief Engineer and shall be made available to all interested parties.
- B. Written Authorization Required. Pursuant to ARS §48-3615(D), there is strict liability for damages by any person, firm, partnership, association, corporation, or any agent of any such person or group, or the State of Arizona or a political subdivision of the State, who damages or interferes with a facility that is owned, operated or otherwise under the jurisdiction of the District without written authorization.
- C. Issuance of Permit. Any District Facility that the Chief Engineer has determined to be available for secondary or temporary uses, in addition to the District’s primary use, may be permitted for use by any person in accordance with the rules and regulations contained herein, as follows:
 - 1. Upon finding that the proposed disturbance or impact does not otherwise interfere with the health, safety and welfare of the general public, the Chief Engineer may issue a Facility

Impact Permit, specifying that all such work shall be done in the manner specified in this Chapter.

2. A use allowed by a Facility Impact Permit shall not conflict or interfere with the drainage or conservation values of the District Facility, except as specified in the approved permit.
- D. Real Property Interest Required. Applicant may not proceed with any use permitted pursuant to this Chapter until Applicant has obtained a real property interest in the affected real property allowing the intended access and use. For property where the District has the legal right to grant all requested access and use, a permit issued under this chapter that explicitly grants the requested access and use will satisfy the real property interest requirement. The interest must be current. Expired or superseded interests are not acceptable demonstrations of property interest.
- E. Application. All Applicants shall obtain written permission from the Chief Engineer by applying for a Facility Impact Permit on a form provided by the District.

21.02.040 Permit – Exemptions

- A. A Facility Impact Permit shall not be required for any authorized use, improvement, or disturbance to a District Facility that existed prior to the adoption of these regulations. Routine maintenance associated with existing uses and improvements will not require a permit. At the time of replacement, expansion, upgrade of an existing use or improvement, or repairs associated with damage due to flooding, erosion, or channel migration, a Facility Impact Permit is required. Emergency repairs of utilities to restore service do not require a Facility Impact Permit. However, more permanent repairs to the utility may require a Facility Impact Permit.
- B. A Facility Impact Permit shall not be required for passive uses that cause minimal disturbance, as determined by the Chief Engineer, such as hiking, horseback riding, etc. that are compatible with the natural environment. The creation of new disturbances for these activities is not exempt.
- C. A Facility Impact Permit shall not be required for projects authorized and funded in whole or in part by the District.

21.02.050 – Application Submittal Requirement – Type of Use

The type, duration and location of a proposed impact will determine the amount of information needed to support an application for a Facility Impact Permit. Use categories and submittal requirements are described as follows:

- A. Tier 1 - Temporary impact with minimal disturbance of District Facilities. This use is temporary with minimal disturbance, including temporary ingress/egress to another parcel using existing roads, access for purposes of survey, non-invasive cultural or biological surveys or scientific research projects, land stewardship activities such as removal of invasive species by hand or chemical methods, installing native plants by hand or hand placement of rock structures to mitigate erosion, or other similar uses. The submittal requirements for a Tier 1 impact include:
1. Project description. The application shall include the name and contact number of the proposed user, the scope of use, site plan, and a timeframe or schedule of the proposed activities.
 2. Insurance. As required, pursuant to 21.02.090.
 3. Permit Fees. There is no fee for a Tier 1 Facility Impact Permit.

4. Where special circumstances necessitate more detailed information, the applicant shall furnish any other information deemed necessary for review of public safety and floodplain management requirements, as determined by the Chief Engineer.
- B. Tier 2 - Long-term or permanent impact with minimal disturbance of District Facilities. Examples of this type of use would include permanent ingress/egress to another parcel, large-scale ecosystem restoration, removal of invasive species using heavy equipment, or other similar uses. The submittal requirements for a Tier 2 impact include:
1. Project description. The application shall include the name and contact number of the proposed user, the scope of use, a site plan and timeframe or schedule of proposed activities.
 2. Mitigation. The application shall include a plan for restoring any areas temporarily impacted to pre-disturbance conditions, as necessary.
 3. Insurance. As required, pursuant to 21.02.090.
 4. Permit Fees. There is no fee for a Tier 2 Facility Impact Permit; however applicant shall pay for all costs associated with establishment of a license agreement or permanent easement.
 5. Where special circumstances necessitate more detailed information, the applicant shall furnish any other information deemed necessary for review of public safety and floodplain management requirements, as determined by the Chief Engineer.
- C. Tier 3 - Limited disturbance of District Facilities. Examples of this type of impact include utility line or private storm drain construction that impact unimproved minor watercourses (less than 2000 cfs), or the temporary stockpiling of material on District Lands. The submittal requirements for a Tier 3 impact include:
1. Project description. The application shall include the name and contact number of the proposed user, the scope of use, and a site plan. The following additional information is required for utilities and storm drains:
 - a. A complete set of construction drawings that show construction in compliance with District standards and specifications. Initial concept plans may be submitted to the District to avoid major revisions to final construction drawings.
 - b. A discussion regarding alternatives that avoid impacting District Lands,
 - c. A description of the methods used to minimize the impact, if not avoidable.
 - d. An assessment of the need for permits required pursuant to Section 402 or 404 of the Clean Water Act and Section 408 of the Rivers and Harbors Act. Provide a copy of these documents and a Stormwater Pollution Prevention Plan, if applicable.
 - e. The plan for mitigation of any disturbance, if required.
 2. Mitigation. The application shall include a plan for restoring any areas temporarily impacted to pre-disturbance conditions, as necessary.
 3. Insurance. As required, pursuant to 21.02.090.
 4. Permit Fees. The fee shall be determined pursuant to 21.02.120 which covers the cost of application review, permit issuance, and inspections. Additional costs associated with establishment of a license agreement or permanent easement, if necessary, may also be required.
 5. Posting of Bond – A bond shall be posted pursuant to 21.02.100.
 6. Where special circumstances necessitate more detailed information, the applicant shall furnish any other information deemed necessary for review of public safety and floodplain management requirements, as determined by the Chief Engineer.

- D. Tier 4 - Disturbance of a District Facility. Examples of this type of impact include any impact to a District Facility associated with a major watercourse with base flood peak discharges greater than 2,000 cfs, any impact to a District Structure, including planting or paving, the construction or modification of any District Structures, or significant disturbance of District Lands. The submittal requirements for a Tier 4 impact include:
1. Project description. The application shall include the name and contact number of the proposed user, the scope of use, and a site plan. The following additional information is required:
 - a. A complete set of construction drawings that show construction in compliance with District standards and specifications,
 - b. A discussion regarding alternatives that avoid impacting the District Facility,
 - c. A description of the methods used to minimize the impact, if not avoidable.
 - d. An assessment of the need for permits required pursuant to Section 402 or 404 of the Clean Water Act and Section 408 of the Rivers and Harbors Act. Provide a copy of these documents and a Stormwater Pollution Prevention Plan, if applicable.
 - e. The plan for mitigation of any disturbance, if required.
 2. Mitigation. The application shall include a plan for restoring any areas temporarily impacted to pre-disturbance conditions, as necessary.
 3. Insurance. As required, pursuant to 21.02.090.
 4. Permit Fees. The fee shall be determined pursuant to 21.02.120 which covers the cost of application review, permit issuance, and inspections. Additional costs associated with establishment of a license agreement or permanent easement, if necessary, may also be required.
 5. Posting of Bond – A bond shall be posted pursuant to 21.02.100.
 6. Where special circumstances necessitate more detailed information, the applicant shall furnish any other information deemed necessary for review of public safety and floodplain management requirements, as determined by the Chief Engineer.

21.02.060 – General Permit Conditions – Type of Impact

The following minimum conditions shall apply based on the type of disturbance or impact proposed. The Chief Engineer may provide additional specific conditions, as needed to ensure the health, safety, and welfare of the general public and the use, functionality, and integrity of the District Facility:

- A. Tier 1 impacts are temporary and minimal. As such, the following conditions apply:
1. Intentional ground disturbance or construction activity, including earthmoving, road grading, blading, leveling, or vegetation removal are prohibited. Invasive species removal as described in Section 21.02.050.A is exempt from this prohibition. Temporal impacts, such as creation of tire tracks, is considered incidental to the activity unless determined by the inspector to be excessive.
 2. Vegetation trimming may be allowed if required to meet the intent of the proposed impact.
 3. Any disturbance identified during the final inspection shall be mitigated by the permittee.
- B. Tier 2 impacts are permanent but minimal. As such the following conditions apply:
1. Unpermitted ground disturbance or construction activity, including earthmoving, road grading, blading, leveling, or vegetation removal are prohibited. Invasive species removal as described in Section 21.02.050.B is exempt from this prohibition. Temporal impacts,

- such as creation of tire tracks, is considered incidental to the activity unless determined by the inspector to be excessive.
2. Vegetation trimming may be allowed if required to meet the intent of the proposed impact.
 3. Any disturbance identified during either the initial or periodic inspection shall be mitigated by the permittee.
- C. Tier 3 impacts are on minor watercourses, District Lands, natural drainage ways, and are limited in extent. As such, the following conditions apply:
1. The proposed impact shall be constructed in accordance with the Facility Impact Permit and the associated construction plans. Any deviation from the plan that impacts the District Facility shall require written authorization by the District prior to construction.
 2. The permittee shall call the District for inspection at the milestones identified on the Facility Impact Permit.
 3. The applicant shall comply with the provisions of Section 21.02.110.
 4. As-built plans of the authorized activity shall be submitted to the District within 30 days of project completion, which may include material certifications and engineer of record inspection documentation.
- D. Tier 4 impacts are on any major watercourses, any impact to District Structures, and include construction of structures that the District will maintain. As such, the following conditions apply:
1. The proposed impact shall be constructed in accordance with the Facility Impact Permit and the associated construction plans. Any deviation from the plan that impacts the District Facility shall require written authorization by the District prior to construction.
 2. The permittee shall call the District for inspection at the milestones identified on the Facility Impact Permit.
 3. The Applicant shall comply with provisions of Section 21.02.110.
 4. As-built plans of the authorized activity shall be submitted to the District within 30 days of project completion, which may include material certifications and engineer of record inspection documentation.

21.02.070 – Special Conditions

Depending on the type and complexity of a proposed impact on a District Facility, the following special conditions may be included on the Facility Impact Permit:

- A. Pre-construction meetings
- B. Special mix designs
- C. Shop drawings
- D. Third party materials testing
- E. Material certifications
- F. Specific inspection milestones, including final walkthrough inspection

21.02.080 – Inspections

The District may perform inspections at any time without prior notification. In order to ensure compliance with the Facility Impact Permit, the on-going protection of the health, safety and welfare of the general public, and to verify that additional or unauthorized damage or interference to the District Facility has not occurred, the District shall perform an inspection at the following milestones:

- A. Tier 1 impacts. Within 30 days after completion of the proposed use of the property, the District shall perform a final inspection.
- B. Tier 2 impacts. The District shall perform an inspection within 30 days after initial establishment of the impact, and periodically thereafter.
- C. Tier 3 impacts. The District shall perform inspections pursuant to the milestones established in the Facility Impact Permit. It is the responsibility of the permittee to request inspections upon reaching each milestone. The District shall perform a final inspection upon completion of construction in order to verify compliance with terms and conditions of the permit.
- D. Tier 4 impacts. The District shall perform inspections pursuant to the milestones established in the Facility Impact Permit. It is the responsibility of the permittee to request inspections upon reaching each milestone. The District shall perform a final inspection upon completion of construction in order to verify compliance with terms and conditions of the permit.

21.02.090 – Insurance Requirement

Insurance requirements shall be determined by the Pima County Department of Finance and Risk Management, Risk Management Division. No evidence of liability insurance is necessary for federal, state, county, or municipal agencies, political subdivision or other public service corporation with a net worth of more than \$1,000,000 as reflected on its most current balance sheet.

21.02.100 – Posting of Bond

An applicant may at the time of application for a Facility Impact Permit, be required to post a performance bond for one hundred percent of the cost of the work impacting the District Facility. A cash bond or its equivalent, equal in value to one hundred percent of the work impacting the District Facility, may be substituted for a performance bond. This bond or its substitute will be held until the work has been completed and has been accepted by the District. An applicant may be exempted from posting bond with the approval of the Chief Engineer. Posting bond is not required for activities covered by an assurance agreement required pursuant to Arizona Revised Statutes Section 11-821(C).

21.02.110 - Liability and Project Site Requirements

- A. The permittee assumes the responsibility and all liability for any injury or damage to any person or property caused by or arising from the impact authorized by the Facility Impact Permit. The permittee shall indemnify, defend and hold harmless the District and Pima County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature arising out of the exercise of the permit which are attributed to any act or omission of the applicant, its agents, employees or anyone acting under its direction, control or on its behalf. In the event suit shall be brought and the District or Pima County is named as a defendant, all costs for counsel, either house counsel or retained counsel, and any other court costs associated with defending itself shall be paid by the applicant.
- B. Where work is performed in a drainage way, drainage easement or designated floodplain, the permittee shall not at any time obstruct or diminish in any manner the ability of the drainage way, drainage easement or designated floodplain to convey or pass stormwater except as allowed in the Facility Impact Permit. All existing District Structures damaged or removed

shall be replaced immediately to the satisfaction of the Chief Engineer or authorized representative at no cost to the District or Pima County.

- C. All work shall occur in a manner that is least destructive to existing public improvements and natural resources and shall be completed in the shortest possible timeframe, at no cost to the District, as directed by the Chief Engineer or authorized representative. Permittee shall notify the District representative noted on the Facility Impact Permit at least forty-eight hours prior to starting work. Once the work has begun it shall continue in a timely manner until completion with no significant gaps in the time between execution of the various phases of the work. In the case of an emergency requiring immediate work impacting a District Facility, the permittee shall make a diligent effort to contact the District prior to commencement of work. Such emergency work shall be halted upon issuance of a stop work order by the Chief Engineer. Emergency work shall not continue beyond twenty-four hours during the normal workweek or the next full work day following a weekend or holiday without the issuance of a written permit.
- D. If the work performed or materials used by the permittee for repair or reconstruction of a District Facility under the Facility Impact Permit fails to pass final inspection, the permittee shall remove defective improvements and replace with improvements that meet specifications under the approved plan within the timeframe specified by written notice from the Chief Engineer or authorized representative. Facilities such as utilities that are abandoned or found to be defective may remain in place, at the discretion of the Chief Engineer.
- E. The permittee shall not allow any condition to exist in connection with the exercise of the permit which would be a hazard or source of danger to the general public. If the work presents or becomes a hazard to the general public, the District may take immediate corrective action to protect public health and safety or as otherwise allowed by law. The District may bill the permittee for the full cost incurred for such corrective action.
- F. The permittee shall be responsible for verifying the location of all underground utilities in accordance with the Blue Stake laws prior to the commencement of any excavation and shall protect said utilities from damage.
- G. All work shall be accomplished in accordance with applicable requirements of the Pima County Code, including Floodplain Management Ordinance, Grading Ordinance, Channel Design Standards Manual, and any other applicable engineering details, standards or specifications of the District and Pima County. With the exception of plans prepared by public service corporations that are subject to federal and state regulations concerning safety and design, all work shall be performed in accordance with plans prepared by a professional engineer.
- H. The permittee or his representative shall keep a copy of the Facility Impact Permit and make it available to the District upon request.
- I. If at any time, the District Facility, or any portion thereof, occupied and used by the permittee in accordance with the Facility Impact Permit is needed or required by the District or County, the permittee, upon receipt of notice shall, at no cost to the District or County, remove, relocate, or abandon in place all property belonging to the permittee, unless other arrangements are agreed to by the Chief Engineer.
- J. In the event the applicant does not repair the District Facility to the conditions set forth by the Chief Engineer or authorized representative after a thirty-day notice of any deficiencies, the applicant by the acceptance of a permit agrees to be responsible for all costs of completing such repair, and in the event suit is necessary, agrees to be responsible for all costs of collection including but not limited to court costs and attorney's fees.

K. Applicant is placed on notice that the District may not own the particular property or property rights for which the permit is issued. Applicant assumes all liability resulting from any defect to the title of the land and no warranty of title to the underlying land is expressed or implied.

21.02.120 - Fees.

Pertinent charges for the above required permit and for meeting the conditions of the permit, as well as fines applied to the applicant due to violations of the permit requirements, shall be set forth by a fee schedule approved by the Board of Directors for the Flood Control District and amended from time to time. A copy of the fee schedule is on file at the District's office and website.

21.02.130 - Violation—Penalty.

- A. Any person, contractor, utility company or corporation violating any of the provisions of this chapter are subject to civil penalties or other legal action as provided by pertinent state statutes, including but not limited to ARS Sections 48-3615.01. The procedures set forth in Sections 16.64.020 and 16.64.070 of the Pima County Code also apply to notice and abatement of violations of this chapter.
- B. In addition to any penalties that occur during the compliance enforcement process, any impact that has occurred prior to issuance of a Facility Impact Permit, except as provided for emergency work in 21.02.110.C, shall require payment of double the permit fee.

SECTION 2. The fee schedule referenced in new Pima County Code Section 21.02.120 is approved as shown in Exhibit A.

SECTION 3. The various Pima County and Pima County Flood Control District officers and employees are hereby authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

PASSED AND ADOPTED this ____day of_____, 2018 by the Pima County Flood Control District Board of Directors, Pima County, Arizona.

ATTEST:

BOARD OF DIRECTORS OF THE PIMA COUNTY
FLOOD CONTROL DISTRICT

Julie Castañeda
Clerk of the Board

Richard Elías, Chairman

Recommended to the Board:

Suzanne Shields, Director
Pima County Flood Control District

Approved as to form:

Deputy County Attorney for the District

EXHIBIT A

**PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT
FACILITY IMPACT PERMIT FEE SCHEDULE**

Application Fee:

**Tier 1 and Tier 2 Impacts: No Fee
Tier 3 and Tier 4 Impacts: \$150**

Inspection Fee:

**Tier 1 and Tier 2 Impacts: No Fee
Tier 3 and Tier 4 Impacts: \$150/per inspection**

Materials Testing:

Cost of County materials testing laboratory (can be completed by independent testing laboratory with no fee applied)

Property Rights:

Determined separately by Real Property