

New Braunfels Policies and Procedures for Obtaining and Applying Offsets and Credits Against Roadway Impact Fees

City Policy Statement and Rules Concerning Offsets and Credits Against Roadway Impact Fees.

Offset and Credit Agreements.

A property owner or authorized applicant for plat approval (the “applicant”), who is subject to the payment of roadway impact fees under New Braunfels Municipal Code Chapter 100, may obtain offsets and credits (“offsets”) against such fees for construction and/or dedication of right-of-way for a roadway capital improvement serving a new development that has been included in the roadway impact fee capital improvements plan. The verified costs of such contributions will be applied against roadway impact fees otherwise due for a new development pursuant to a written offset and credit agreement (“offset agreement”) in a form promulgated by the City Engineer.

Timing of Agreement

1. Preliminary Plat. The applicant may file a request for offset eligibility with the City Engineer at the time of application for preliminary plat approval, or if a preliminary plat is not required, at the time of application for final plat approval. The City Engineer will notify the applicant whether the facilities to be dedicated or constructed have been included in the roadway impact fee capital improvements plan (“eligible capital improvements”) and if the facilities are eligible for offsets at the time of the request. A request for offset eligibility does not vest the applicant’s rights to any subsequently acquired benefits under the agreement. The applicant shall provide the following information in order to review offset eligibility:
 - a. Completed offset eligibility request
 - b. Eligible capital improvements including project number and service area
 - c. Proposed capital improvements to be dedicated or constructed
 - d. Preliminary or final plat submitted with application for approval
 - e. Approved traffic impact analysis including analysis demonstrating the capacity of the proposed improvements that are beyond the benefit of the development
2. Final Plat. The applicant shall file a petition for offsets with the City Engineer either at the time of application for final plat approval or before the time of fee payment. The City Engineer will provide the applicant, in writing, a decision on eligible offsets and maximum value of offsets which may be applied against the impact fees due with the final plat in an offset agreement. The offset agreement will be created after final plat approval and finalized at the time of final plat recordation. The offset agreement shall be approved by City Council and executed by the City Manager. The offsets included in the agreement cannot be applied to impact fees due until the time of building permit application for a new development subject to the final plat. The applicant shall provide the following information in order to determine the maximum value of offsets and to process an offset agreement:

- a. Completed petition for offsets
- b. Eligible capital improvements including project number and service area
- c. Proposed capital improvements to be dedicated or constructed
- d. Final plat submitted with application for approval
- e. Approved traffic impact analysis including analysis demonstrating the capacity of the proposed improvements that are beyond the benefit of the development
- f. Approved construction plans for the proposed capital improvements
- g. Approved construction estimate for the proposed capital improvements
- h. Value of right-of-way dedication for the proposed capital improvements on the appraisal district's latest records

Relationship to Proportionality Appeal

An appeal undertaken by a property owner who seeks to contest a dedication or construction requirement imposed under the subdivision regulations pursuant to section 118-13 on grounds of proportionality normally is determined prior to execution of any impact fee offset agreement. The City Engineer in submitting his response to a proportionality appeal shall take into account the eligibility of the facilities which are the subject of the appeal for impact fee offsets and shall estimate the amount of such offsets due the property owner. Such preliminary determination shall not affect the amount of the offsets included in an impact fee offset agreement, which must be based on verified costs.

Changes in Impact Fee Rates

1. Roadway impact fees shall be assessed against new developments subject to the approval of final plat or replat in accordance with the provisions of Chapter 100.
2. The roadway impact fees to be charged against a new development (subject to offsets) are those in effect at the time a building permit is issued, provided that the impact fee per service unit does not exceed the impact fee per service unit assessed against the subdivision.
3. Following assessment of impact fees, no additional impact fees or increases shall be assessed unless the number of service units increases.

Method of Applying Offsets

1. Retention of Offset Agreement. With a complete and approved petition for offsets, an executed offset agreement shall be developed and retained by the City in the file for the final plat associated with the agreement.
2. Offset Pool. The total verified costs of eligible capital improvements contributed by the applicant for a subdivision shall constitute the initial offset pool associated with a recorded final plat.
3. Application of Offsets Against Impact Fees Due. The City shall apply offsets against the roadway impact fees due for the first building permit subject to the recorded final plat, and thereafter, against roadway impact fees due for each building permit subsequently issued, until the offset pool has been exhausted.
4. No Payment for Excess Offsets. In the event that offsets have been applied against impact fees due for all lots in the subdivision, and unused offsets remain in the offset pool, in no circumstances will the value of such excess offsets be paid to the property owner.
5. Expiration of Offsets. Unused offsets associated with a recorded final plat will expire 10 ten (10) years after the date of recordation, unless such offsets are extended in accordance with Chapter 100 or these rules.
6. Transfer of Offsets Prohibited. Offsets associated with a final plat cannot be transferred to different land, unless the land is subject to a multi-phase offset agreement that provides for such transfer.

Replats

1. If land subject to a final recorded plat is replatted, a new assessment will be performed at the time the replat is recorded in accordance with Chapter 100. Unused offsets created by an offset agreement may be used to reduce impact fees for new development subject to the replat.
2. If additional eligible capital improvements are contributed by an applicant as a condition of approval of the replat, the verified costs of such improvements will augment the remaining offset pool if an addendum is executed to the original offset agreement.

Multi-Phase Subdivisions

1. **Master Plan Subdivision.** Where an applicant proposes a master plan for a multi-phase subdivision that includes eligible capital improvements in one or multiple phases, the applicant may request that the City Engineer identify the capital improvements associated with the proposed master plan that are eligible for offsets against roadway impact fees otherwise due. The applicant may apply for an offset agreement in accordance with this policy at the time of application for the final plat for the first phase of the approved master plan for which the applicant contributes eligible capital improvements.
2. **Multi-phase Subdivision Addendum.** When an applicant proposes a subsequent final plat for a multi-phase subdivision, the applicant may apply for an addendum to the original offset agreement. If agreed to by the City, the verified costs of the improvement(s) may be applied to reduce impact fees due for lots or uses subject to an earlier or later phase of the subdivision. As additional phases of the subdivision are finally platted, the amended offset agreement for the subdivision may be further amended by additional addenda containing like provisions.
3. **Multiple Approved Final Plats.** Where the original offset agreement applies to more than one approved final plat for a multi-phase subdivision, the verified costs of all eligible capital improvements dedicated, constructed and accepted by the City may be offset against impact fees due for any lots or uses within such phases.
4. **Offset Improvements by Phase.** As eligible capital improvements are dedicated, constructed and accepted by the City for each additional phase of a multi-phase subdivision, the verified costs of such improvements shall be added to the offset pool once an addendum to the original offset agreement for the subdivision is executed.
5. **Offsets Applied to Subsequent Phases.** Excess offsets obtained through contributions of eligible capital improvements for prior recorded phases of a multi-phase subdivision may be used to reduce roadway impact fees due for new developments in subsequently approved phases of the subdivision.
6. **Reimbursement of Impact Fees Where Offsets Exceed Impact Fees Due.** In the event that the verified costs of eligible capital improvements for a phase will exceed the amount of impact fees due for lots in that and prior phases of a multi-phase subdivision, the subdivider may apply for reimbursement of impact fees previously paid to which no offsets were applied. In its sole discretion, the City may approve a reimbursement request, or, in the alternative, may provide for reservation of the offsets to be applied against impact fees due for lots in one or more subsequent phases of the multi-phase subdivision.

Cost Participation by the City

An offset agreement may contain provisions for the City's participation in the costs of an eligible roadway improvement. The amount of the City's participation shall be subtracted from the verified costs of the roadway improvement.