

City's Impact Fee Ordinance Faces Legal Challenges

By [Dan McKay / Journal Staff Writer](#) on Thu, Jan 24, 2013

The city of Albuquerque faces a pair of legal challenges to its new impact fee ordinance from companies who say the new system established fees so low that it ruined the value of credits they earned under the old system.

Developer Curb Inc. filed a notice of appeal earlier this month arguing that it has roughly \$2.5 million in excess impact fee credits and that the new ordinance rendered the company's impact fees "worthless."

Impact fee credits are earned when developers build streets, roads or other infrastructure beyond what's strictly necessary to serve their particular development.

A second legal challenge, filed by Premier Trust of Nevada Inc. and others, said the companies represented in that lawsuit had more than \$1.7 million in excess impact fees that are now substantially or completely worthless.

The city Legal Department plans to fight the lawsuits.

"The city doesn't believe they have a valid claim in either case," City Attorney David Tourek said Tuesday in a brief interview.

The new impact fee system won approval from the City Council on a 6-3 vote in November and was signed by Mayor Richard Berry. It went into effect the following month.

The new ordinance set impact fees at 50 percent of the level recommended by the city's consultant on the project. There is also a phase-in period before the fees reach the 50 percent level.

Reforming the fee system was a major priority of Berry and many city councilors. Supporters of the new system said it was necessary to simplify the fee structure and ensure the city didn't unfairly penalize development on the West Side, in particular.

Impact fees are the way City Hall determines how much to charge developers for the parks, roads and other infrastructure needed to accommodate new growth.

Both legal challenges to the ordinance were filed in state District Court this month.

The Premier Trust lawsuit asks a judge to declare the new ordinance unlawful and prohibit the city from collecting fees at the reduced rate. They also want damages and refunds.

Their suit accuses the city of "unjustly enriching itself and other builders in its attempt to spur residential and commercial building in the city, over the next two years, by reduction of collectible impact fees at the expense of Petitioners."